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MEMOIRS

OF

CHARLES LEE LEWES,

COMEDIAN.

VOL. III.

MEMOIRS

OF

CHARLES LEE LEWES,

CONTAINING

ANECDOTES,

HISTORICAL AND BIOGRAPHICAL,

OF THE

ENGLISH AND SCOTTISH STAGES,

DURING A PERIOD OF FORTY YEARS.

WRITTEN BY HIMSELF

IN FOUR VOLUMES.

VOL. III.

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MEMOIRS

OF

CHARLES LEE LEWES, Esq.

Scottish Stage.

AS yet I have scarcely glanced at the Scottish Stage. I propose being pretty full upon a subject so well deserving the public notice. What hath been related hitherto, in regard to the Edinburgh Theatre, has been too diffuse, being scattered through a great many different publications, such as monthly magazines, occasional pamphlets, private letters from one correspondent to another; wherein, perhaps through design or carelesness, facts have been misrepresented.

To remedy in some measure these defects, I propose to compress all the several informations I have been able to collect from the most authentic documents, relative to the theatrical affairs of the Caledonian metropolis. And though I may be induced to deviate from the line of progressive connection, by relating some anecdotes which may occasionally occur in the course of my subject, yet am I determined not to lose sight of my main object.

AN ABSTRACT AND BRIEF CHRONICLE

OF THE

EDINBURGH STAGE,

From the Earliest period of Theatrical Representations, to Anno Domini 1793.

MR. JACKSON.

I am aware of the analogous managerial chronology that will be found in the following history, to that lately offered the public by Mr. Jackson, under the title of the

HISTORY OF THE SCOTTISH STAGE;

a previous publication of his, in which he has interwoven his *Statement of Facts*.

It would be duplicity in me to say I had not read it. I anticipated this jumble of *egotism* and *scurillity* against Mr. Stephen Kemble, in his Statement

of Facts. His conclusion is, "I am the honestest man in the world, and Mr. S. Kemble is the greatest rogue." *Query*, has he not put the cart before the horse?—A friend of mine, at Glasgow, wrote me as follows, in January last, 1793, when I was in Dublin.

"I find Jackson is going to publish a Statement of Facts (as he calls them), productive of his dispute with Mr. Kemble. I have no doubt that this publication will be in perfect unison with the uniform and undeviating rectitude of this worthy man's character and actions: no doubt, therefore, I must be impelled to peruse it from a stronger motive than curiosity, the fair and full conviction of a sacred regard to truth and honour in the narrative. Under such impressions, you will, no doubt, believe that I am impatient to

see this Statement of Facts, and you may expect to hear my sentiments after I have given it the reading."

In his next letter he says:

"The whole is invective against Mr. S. Kemble: To undertake to follow him throughout by a regular animadversion, would be much to the same purpose, as if a man should spend time in the attempt to catch the soap bubbles which children let fly to divert themselves with; which, being grasped, vanish into air, leaving only a little dirty water behind. He has, poor man, been many years writing without being understood; I should be glad to know how many more he will take to make himself *believed*."

But (of Mr. Jackson, more anon) to return to my chronicle of the Edinburgh stage.

I believe it will be unnecessary to inform my readers of taste for scenic performances, that the first representations that bore the least resemblance to the antient drama of the Greek and Roman manner, were exhibited in this island in the churches: the compositions were executed by the learned and *abundantly erudite* clergy of the middle, or age of Cimmerian darkness. They went by the several names of the *Mysteries*,* *Moralities*, &c. and in them al-

* In Brand's history of Newcastle upon Tyne, we find the following remarks relative to the derivation and application of the word *Mysteries*. He says——

"There are *twelve* companies called Mysteries, *fifteen* bye trades; the first in the bye trades that occurs are masters and mariners. For what reason the word *mysterie* is confined to the first twelve companies, we cannot say; if it is derived, as it seems now to be allowed, not from the Greek or Latin, but from the French, (or *Romanic*),

legorical personages, such as *Sin*, *Death*, &c. were frequently introduced. Some

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still it accords equally well with the other associations as with the first; for *mestiere*, or, according to more modern orthography, *metier*, signifies a trade: but possibly the term may have reference to the plays, which, on a day assigned, the companies were to perform. These scriptural dramas, or, according to the phrases here used, miracle plays (or Corpus Christi plays, because performed often on that day) have been also called mysteries, whence the name might be transferred to the companies. This however is conjecture. It appears astonishing at the present day, to find those rough uncultivated people engaged in such kind of performances, and though (considering the subjects which they chose) the practice has somewhat of a prophane, as well as of a ridiculous appearance, yet, who can refrain from a smile, to think of a number of *slaters* acting the Offering of Isaac; or *blacksmiths*, the Purification; or *taylors*, the Descent into Hell. These silly performances, which, under the ignorant notion of religion, burlesqued the scriptures, and promoted prophaneness and licentiousness, were for a long time countenanced

of these pieces were called Sacred Comedies, such as the "*Nativity of our Saviour*, or the *Comedia Joannis de Christi Baptismo.*"

"A brefe Comedy, or Enterlude of Johan Baptystes preachynge in the wyldernesse, openynge the craftye assaultes of hypocrates, with the glorious baptyme of the Lord Jesus Christ. Compyled by Johan Bale, anno. MDXXXVIII." *

Here follow the Dramatis Personæ.

"INTERLOCUTORES."

Pater cælestis, i. e.		The heavenly Father
Ioannes Baptista,		John the Baptist.
Publicanus,	-	The Publican.
Pharisæus,	-	The Pharasee.

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by bigotry and priestcraft: but, at length, about the beginning of the reign of James the first, were finally suppressed."

* The year in which Henry the Eighth threw off the Papal yoke.

Jesus Christus, Jesus Christ.
Turba Vulgaris, The Common People.
Miles Armatus, The Soldier.
Saducæus, The Sadducee.

"*Baleus Prolocutor Præfacio*; or the MASSACRE BY HEROD."

This last must be allowed to be an excellent subject for a Comedy, whether sacred or profane.

These abominable representations made their way from the Continent to England. It was not long, however, till they were introduced into Scotland; where, it must be acknowledged, they were no way behind hand with their brethren in the south of Britain in absurdities,* when theatrical repre-

* These kind of sportings with the awful mysteries of religion were weak, wretched, and wicked imitations of the all-wise and truly philosophic energies fabled in the *Eleusinian* and *Bacchic Mysteries*, little understood by the philosopher

sentations came at last not to be altogether restricted to religious sub-

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of the present day. A very intelligent writer on the celebrated Mysteries of the Antients, in a book lately published in Holland, has observed, that there is nothing less solidly known. He presents us with a very learned elucidation of the various species of ancient fables, the theological, physical, animastic, and material; and vindicates the wisdom of the authors of those fables, from the unjust aspersions of the ignorant, among whom he too hastily reckons Dr. Warburton. He proves that the different purifications exhibited in these mystic rites, in conjunction with initiation and inspection, were symbols of the gradation of virtues requisite to the re-ascent of the soul. He asserts, that the true end and design of them was to lead us back to the principles from which we descended; and that, by living according to the purity which the mysteries inculcated, man should re-ascend to that perfection of his nature from which he has unhappily fallen; that is, to a perfect enjoyment of intellectual good: he affirms, that these sacred rites have ever been misrepresented by Christian priests, and unfolds their occult

jects, nor confined solely to be performed in churches, or upon Sundays.

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meaning from authority the most respectable, and from a philosophy the most venerable and august. He boldly asserts, that though Dr. Warburton, in his divine Legation of Moses, has ingeniously proved, that the sixth book of Virgil's Æneid represents some of the shows of the Eleusinian Mysteries; yet, at the same time, he has miserably failed in attempting to unfold their latent meaning, and obscure, though important signification. By the assistance of the Platonic Philosophy, he corrects Dr. Warburton's errors, and vindicates the wisdom of antiquity from his malevolent and ignorant aspersions, by a genuine account of this sublime institution. He laments the ignorance and malevolence which presides over the generation of Catholic priests; the barbarous and mythological systems of the moderns alternately excites his grief and indignation, his pity and contempt; for, that they contain nothing but folly and delusion; "opinions founded either on fanaticism or atheism, inconceivably absurd and inextricably obscure, ridiculously vain and monstrously deformed, stupidly dull and contemptibly

When the performers of these mysteries ceased to address themselves to the

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zealous, fanatically delirious or historically dry; and such only as ignorance could conceive, impiety propagate, and the vapid spirit of the moderns be induced to admit."

This very ingenious writer infers, with the greatest probability, that the recondite meaning of the Mysteries was not known even to Virgil himself, who has so elegantly described their external form; for, notwithstanding the traces of Platonism which are to be found in the Æneid, nothing of any great depth occurs throughout the whole, except what a superficial reading of Plato and the shows of the Mysteries might easily afford. But this is perceived by the moderns, who, entirely unskilled themselves in Platonism, are fascinated by the charms of his poetry, and imagine him to be deeply knowing on a subject with which he was most likely but slightly acquainted; he strengthens this opinion, by farther considering, that the doctrine delivered in the eclogues is perfectly Epicurean, which was the fashionable philosophy of the Augustan age; he, however, considers the Æneid as "a book pre-

gross superstitions of the vulgar, they gratified them in all the indelicacies

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senting us with a faithful view of some part of these sacred rites; and as it is accompanied with the utmost elegance, harmony, and purity of versification, it ought to be considered as an invaluable relic of antiquity, and a precious monument of mysticism, recondite wisdom, and theological information."

His reflections on Dr. Warburton are so bold and energetic, that I shall here give them in his own words:—"From hence the reader will easily perceive the extreme ridiculousness of Dr. Warburton's system, that the grand secret of the Mysteries consisted in exposing the errors of Polytheism, and in teaching the Doctrine of the Unity, or the existence of one Deity alone. He might as well have said, that the great secret consisted in teaching a man how, by writing notes on the works of a poet, he might become a bishop! But it is by no means wonderful, that men who have not the smallest conception of the true nature of the gods; who have persuaded themselves that they were only dead men deified; and who measure the understanding of the antients by their

which were agreeable to the appetites of the rabble. The ingenious Hugo

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own, should be led to fabricate a system so improbable and absurd. Indeed, the sophistry throughout his whole treatise is perpetual, and every where exhibits to our view the leading features of the man in perfection; I mean consummate arrogance, united with a profound contempt of antient wisdom. For, indeed, from the earliest of the fathers, down to the most modern and vile plebeian teacher among the methodists, the same character displays itself, and is alike productive of the same deplorable mischief to the real welfare of mankind. But it is necessary that impiety should sometimes prevail on the earth; though at the same time, it is no less necessary that its consequent maladies should be lamented and strenuously resisted by every genuine lover of virtue and truth."

This ingenious author of a Dissertation on the Eleusinian and Bacchic Mysteries, thus proceeds, from the manuscript commentary of Olympiodorus on the Georgias of Plato; the secret meaning of the fables concerning the punishment of

Arnot, esq. author of the History of Edinburgh, published so lately as 1788,

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impure souls, is by him affirmed in a beautiful and profound manner. "Ulysses," says he, "descended into Hades, saw, among others, Sysiphus, and Titius, and Tantalus: and Titius he saw lying on the earth, and a vulture devouring his liver; the liver signifying that he lived solely according to the desiderative part of his nature, and through this was indeed internally prudent; but earth signifying the terrestial condition of his prudence. But Sysiphus living under the dominion of ambition and anger, was employed in continually rolling a stone up an eminence, because it perpetually descended again; its descent implying the vicious government of himself; and his rolling the stone, the hard, refractory, and, as it were, rebounding condition of his life. And, lastly, he saw Tantalus extended by the side of a lake, and that there was a tree before him, with abundance of fruit on its branches, which he desired to gather, but it vanished from his view; and this indeed indicates, that he lived under the dominion of the phantasy; but his hanging over the lake, and in vain attempting to drink, implies the elu-

has with much laudable industry cleared the way for me; and spared me the

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sive, humid, and rapidly gliding condition of his life." Again, of the descent of Hercules into Hades—"Hence," says Proclus, in Plat. Polit. page 382, "Hercules being purified by sacred initiations, and enjoying undefiled fruits, obtained at length a perfect establishment among the gods;" that is, well knowing the dreadful condition of his soul while in captivity to a corporeal nature, and purifying himself according to the cathartic virtues, of which certain purifications in the mystic ceremonies were symbolic, he at length fled from the bondage of matter, and ascended beyond the reach of her hands. On this account it is said of him, that

He dragged the three-mouth'd dog to upper day,

intimating, that by temperance, continence, and the other virtues, he drew upwards the intellective, cogitative, and opinionative part of the soul: by Cerberus we are to understand the discriminative part of the soul, of which a dog, on account of its sagacity, is an emblem; and the three heads signify the triple distinction of this part, into intellective, cogitative, and opinionative powers.

trouble of turning over many volumes in search of information from remote

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So that he, who in the present state vanquishes as much as possible a corporeal life, through the exercise of the cathartic virtues, lives surrounded by the bright splendours of truth and wisdom, proceeding from the sun of good. But it must not be understood, that the soul in the regions of felicity retains any affection for material concerns, or engaged in the trifling pursuits of a corporeal life: but, that when separated from generation, she is constantly engaged in intellectual employments, either in exercising the divine contests of the most exalted wisdom; in forming the responsive dance of refined imaginations; in turning the sacred lyre of mystic piety to strains of deific fury and ineffable delight; in giving free scope to the splendid and winged powers of the soul; or in nourishing the intellect with the substantial banquet of intelligible food. So that, according to the wisdom of the antients, and the most sublime philosophy, the misery which a soul endures in the present life, when giving itself up to the dominion of the irrational part, is nothing more than the commencement, as it were, of that torment

periods of the stage's existence in Scotland. And here, as apposite to my

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which it will experience hereafter: a torment the same in kind, though different in degree, as it will be much more dreadful, vehement, and extended. By these specimens the reader may perceive how infinitely superior the explanation which the Platonic philosophy affords of these fables, is to the frigid and trifling interpretations of Bacon and other modern mythologists. R.

The beneficial doctrine of *Purgatory* in the Church of Rome, had its origin and source from the superficial knowledge which modern priests had of the heathen poets and philosophers, and which doctrine was defended with so much labour by Cardinal Bellarmeni. Among several reasons, he harps upon the string of Homer, in the second book of his Odyssey, urging the descent of Ulysses into hell, the dialogues of ghosts, the punishment of departed souls, and the sacrifices to be offered to relieve them; nor does he forget Virgil, who, in the sixth of his Æneid, brings in Anchises discoursing at the same rate.

Ridiculous as the doctrine of purgatory is, there is not any one opinion in the church of Rome de-

subject, I shall take the liberty to transcribe from his agreeable History, an extract from a manuscript Play that was in the possession of the late industrious Mr. Garrick, as a curious specimen of the simplicity of the manners of the times. But let me premise, that all theatrical performances of the local

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fended with so much zeal as this by the Romanists; indeed, there is no opinion in their church, which brings in a better or more constant revenue; it is scarce within the reach of arithmetick, to say what is amassed by Masses, Dirges, Requiems, Trentals, Anniversaries, Casualties, Deodands, Indulgences, Celibacy, and Auricular Confession. It has been observed by some writers, that the fear of losing these incomes, was one main impediment to restrain the Pope from yielding to a reformation: no wonder the chief topic of popery is *Argumentum ab utili*, the *spirit* of their religion is *sacerdotal interest*; and in my mind there is not a doubt, that were it not for the *profitable* part, the *foolish* part of Popery would long since have been laughed out of doors.

kind were exhibited in the *open air*, excepting those which were acted by strollers; who, for a small gratuity, performed at gentlemen's houses, at stated times of the year, particularly at Christmas-tide; which would not, probably, be very agreeable even to the robust constitutions of our hardy progenitors.

"Here begins the proclamation of the Play, made by David Lindsay of the Mount, knight, in the Play-field, in the month of June, the year of God, 1555; made in Cupar of Fife." [Ten lines being premised, it goes on thus:]

"Our purpose is, on the seventh day of June, If weather serve,* and we have rest and peace,

* This address was both a prologue to the piece, and an ingenious method of informing the spectators, that their next exhibition should be on the 7th of June; for the piece from whence

We shall be seen in our playing place,
In good array about the hour of seven.
Of thriftiness, that day I pray you cease,
But ordain us good drink against *allevin*.
Fail not to be upon the Castle-hill,*
Beside the place where we purpose to play;
With good stark wine, your flaggons see you fill;
And *had* yourselves the merriest that you may."

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this *excerpt* is taken, as Mr. Arnot observes, ends thus:

"As for this Play, I have no more to say you,
On Witsun Tuesday, come see our Play I pray you;
That same day is the seventh day of June:
Therefore get up right early and *de'jeunne*."

* Every town of any consequence in Scotland had, in the sixteenth century, a field, or croft, where Plays were exhibited, as before hinted at, in the open air, which went by the name of the Play-field. That at Cupar, as observed in the Prologue, was on the Castle-hill; and that of Edinburgh was held at Greenside-well. Such *fêtes* are not totally disused in these our refined days: so late as the autumn of 1780, I saw the Play of the Recruiting Officer performed upon the open camp ground, at Tenpenny Common in

Collager. "I shall be there with God's grace,
Tho' there were never so great an price;
And foremost in the fair:
An drink an quart in Cupar Town,
With my gossip John Williemsoun,
Tho' all the nolt should *rair*."

Here it is necessary to remark, that I should be desirous of giving my readers more extracts from this curious piece; but Mr. Arnot having thought proper to sacrifice curiosity to delicacy,

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Essex, by the order of the late Earl of Orford, for the amusement of himself, the Earl of Rochford, the officers and privates of the Norfolk militia, which Lord Orford commanded. His lordship, being afflicted with the gout, was led round the airy theatre on a poney, by a careful servant: the ridiculous distress of the actors was truly amusing; as his lordship, by his circular progression, obliged them, in good manners and profound respect to their patron, to wheel about occasionally, to show him a full front.

There was in this company one Spencer, a very blunt and rude fellow. When the play was over, he addressed Mr. Alderman Sawbridge, who was

I am not displeased at the disappointment. That gentleman declares, that the dialogue of this rustic play is too rude, too loose, to be presented to readers of the present reformed times. We have no certain account of any stage-plays, as they were then called, being performed for a great number of years.

The *reformation* in religion was productive of the most savage barbarity, by the destruction of almost every monument of taste which abounded then in Scotland; and with the ruin of her

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also one of the auditors, on the subject of *his* bespeaking a Play. "I bespeak a Play!" said Sawbridge: "you vagabond, I'll have you pressed, if you press me any more on the subject." Spencer turned round to the public, and cried out: "Here's a worthy patriot for you. In the *city* he bellows for liberty, and here he is for having me pressed. Reform! master Sawbridge! Reform! reform! reform!"——Sawbridge afterwards bespoke the play of Jane Shore.

superb structures were the *belles lettres* involved. Where fanaticism flourishes the stage is sure of being discouraged. The reformation in England had a contrary effect; for not till that epoch was there either a play or a performer deserving the notice of the public. But in the very reign in which the reformation was established, a Shakspeare and a Jonson arose! When party ran high in England on the exclusion business in the reign of Charles the Second, the king thought it necessary, for the public quiet, to remove his brother, the Duke of York, to a remote situation from the court. To Scotland he sent him, to act as his commissioner; and the duke took with him his company of players to Edinburgh.* On this oc-

* The Duke of York went to Scotland by sea. He embarked at Woolwich on the 20th October, 1680: the king attended him there, and dined on board.

casion we may fix the time of the first regular plays being performed in Scotland.

The residence of the Duke of York at Holyrood-house, and the exalted station he was in, naturally brought a vast concourse of the nobility and gentry from all parts of the kingdom to the metropolis. They saw English plays, and they relished them highly: though, if any credit may be given to Mr. Dryden's character of the company, they were miserable sticks of wood.

I have already said, that the duke had the company that went under the name of his servants, with him in Scotland: true, they had been some time before this his servants; but, as London itself was not willing, or able, to maintain two companies, though denominated royal, the members had no fixed stipend; they wisely, therefore,

petitioned to be united, and were so, by *letters patent:* but, to please their former patron, the duke's quondam servants separated from their brethren (who were going to Oxford), and crossed the Tweed. Dryden, on this occasion, wrote a ludicrous address for the Oxford party, to be spoken to the University, as follows:

" Discords and plots, which have undone our age,
With the same ruin have o'erwhelm'd the stage.
Our house has suffer'd in the common woe;
We have been troubled with Scots rebels too.
Our brethren have from Thames to Tweed departed,
And of our sisters, all the tender-hearted
To Edinburgh gone, or coach'd, or carted.
With bonny *blue cap*, there they act all night,
For Scots half crowns—in English threepence hight.
One nymph, to whom fat Sir John Falstaff's lean,
There with her single person, fills the scene.
Another, with long use and age decay'd,
Died here old woman, and rose there a maid.

Our trusty door-keeper, of former time;
There struts and swaggers in heroic rhyme.
Tack but a copper lace to Drugget suit,
And there's a hero made without dispute;
And that which was a capon's tail before,
Becomes a plume for Indian Emperor.
But all his subjects, to express the care
Of imitation, go like Indians bare.
Lac'd linen there would be a dangerous thing:
It might, perhaps, a new rebellion bring;
The Scot who wore it, would be chosen king."

From this time no return of the drama is to be traced, even in the reign of Queen Anne, the Augustan age of Scotia's sister-country. The first that thought proper to invade Scotland, after the unhappy contest had subsided, was that formidable Signora Violante who made a descent from Dublin, armed with her long balancing pole, marched fearless into Edinburgh, where she fitted up that house in the foot of Car-

ruber's-close, which has been since occupied as a meeting-house by successive tribes of sectaries.

Signora Violante met with tolerable success, it seems; and being possessed of a round sum of ready money, which she had been enabled to accumulate from rope-dancing, tumbling, and other feats of activity, her evil genius tempted her to collect a company of English comedians, whose turbulent ungovernable spirits were, she found, not so manageable as her harmless pole, and her *flip-flap* and *somerset* gentry. In a short time, therefore, with a light purse and a heavy heart, she returned to Dublin, with a fixed resolution to trouble her head no more with the drama.

It was on her return from Scotland, that she took little Peggy, afterwards

the lovely * Mrs. Woffington, apprentice —some memoirs of that celebrated lady I have already related. So new an entertainment as a play roused the illiberal spirit of the fanatic ministers, and burst out with violent animosity against the stage. The writings of their most popular divines were filled with the most nonsensical invectives, against not only the unhappy performers, but their auditors, as abettors of their *diabolical* declamations, at the play-house, where

* As Mrs. Oldfield's biographer says—"Let the rigid, who cannot overlook her transgressions, imitate her perfections. If they do not choose to give any grains of allowance to the temptations, and if they cannot think there is any excuse for living like her—let them be careful to die like her."

"When mourning Oldfield on her death-bed lay,
Oldfield the fair, the witty, and the gay:
Thus to her friends around her she did cry,
Live not like Oldfield, but like Oldfield die."

they said his infernal majesty frequently appears clothed in a corporeal substance, and possesses the spectators, whom he holds as his worshippers. The magistrates too joined the general cry of the bigoted clergy of Edinburgh, and used their utmost endeavours to expel the comedians from their boundaries. Yet, notwithstanding all these discouragements, the players continued to act; but with what success, may be gathered from the following lines in a prologue spoken by a Mr. Aston, one of the company, to the first night's opening of the theatre, 1726.

" After a circuit round the queen of isles,
To gain your friendship and approving smiles,
Experience bids me hope; tho' south the Tweed
The dastards said, ' He never will succeed.
' What! Such a country look for any good in,
' That does not relish plays, nor pork, nor pudding!"

Once in every three years an itinerant corps visited Edinburgh, and played with various success. They occasionally rented the Taylors'-hall, in the Cowgate, so called from its belonging to the corporation of taylors. The price of admission was then two shillings and sixpence for the pit and boxes, and eighteen-pence for the gallery. At these rates, the taylors'-hall, by a full house, produced forty pounds; and sometimes on an overflow forty-five pounds. Yet I have been informed by a person who had inspected the joint stock-book of Allan Ramsay and Edward Miller, managers, that the whole receipts of a night which was commanded by the Earl of Stair, a deservedly popular nobleman, amounted to no more than twenty-five pounds.

In the year 1737, an act passed for the suppression of unlicensed play-

houses; and such was the zeal of the presbytery of Edinburgh, that they brought an action upon the statute against the comedians, at their *own expence*, and prevailed in the suit. A writ of appeal was taken out, which suspended the decree of the Court of Session; and that the theatre might be no longer harassed by the church, application was made to parliament, for a bill to enable his Majesty to license a theatre at Edinburgh. Petitions against this bill were presented to the House of Commons by the Lord Provost, magistrates, and town council of Edinburgh, by the principal professors of the university, and by the Dean of Guild and his council; and the bill was dropped. As the clergy continued to rail against theatrical entertainments, a noble spirit was excited, in consequence of which the theatre came to be un-

usually frequented. The performers, however, did not bear their good fortune with prudence—they fell into discord among themselves, and one of the factious and discontented party having engaged into his interest the late Mrs. Ward (the original Lady Randolph), then in the bloom of youth and beauty, attempted to ruin the manager of Taylors'-hall, by setting up a new house—a subscription being set on foot for this purpose, the foundation stone was laid by Mr. Ryan of Covent-garden Theatre, at the west end of St. John's-street, Canongate, in August, 1746.

No sooner was this theatre opened, than the Taylors'-hall was deserted, and the company ruined; a certain consequence, as Mr. Arnot says, of rivalship between theatres, any where but in London; and even in that opulent city, we have seen that the com-

panies that played under the sanction of the two royal brothers, were, through sheer poverty, forced into an alliance.

The success of the Canongate-house was for one season greatly enhanced by the following circumstance:—One Robert Drummond, a printer, had been sentenced by the magistrates to be pilloried and banished the city for a twelvemonth, for printing a defamatory poem, or libel, reflecting upon the Duke of Cumberland and certain zealous whigs. His printing-house being shut up, and his journeymen and apprentices set idle in consequence of this sentence, it was contrived that the pastoral comedy of the Gentle Shepherd should be acted by these journeymen and apprentices, for the benefit of their distressed persecuted master.

As the sentence against Drummond was deemed rigorous, and as it became

a party-affair, the scheme of a play was wonderfully relished; and the piece repeatedly performed before such crowded houses, that it was found necessary to erect occasional galleries over the stage, for the convenience of the audience. The theatre was pretty successful till the year 1752; and was occasionally visited by performers of some eminence; among whom were Mr. Luke Sparks, Delane * (the favourite of the

* The mention of this gentleman brings to my recollection an interesting circumstance which happened at Covent-garden Theatre in the year 1749. A captain of an African trader, being entrusted by a Moorish king (who had 40,000 men under his command), with the care of his son, and another youth of rank, to be educated in England, basely betrayed his trust, and sold them for slaves; the captain died before he returned to England, and his officers related the affair: government immediately gave orders to send for them, and their ransom to be paid: they arrived

fair), and the never-to-be-forgotten crack-brained gentleman, Lacy, who, though an actor of no extraordinary

in England, and Lord Halifax undertook the care of them; they were richly clothed in the European manner, and introduced at court on the 22d of January, 1749, and most graciously received by his late majesty. On the same night they went to Covent-garden Theatre to see the play of Oronooko; when they came into the box, the audience being acquainted with their story, received them with a loud burst of applause, which each of them acknowledged with a graceful bow, and took their seats. The case of Oronooko's being made a slave by the treachery of a captain, was so similar to their own; their seeing people of their own colour on the stage, seemingly in the distress themselves had been, and Mr. Delane performing the part of Oronooko so admirably just, struck their young hearts with wonder and surprise. The distress of Oronooko; his meeting Imoinda; the account of his barbarous usage; all combined to raise such sentiments of humanity in their bosoms, that tears, those types of generous minds, flowed plentifully from their eyes. The

talent, shone very conspicuously in another profession, Ranelagh-house being a standing monument of his taste as a projector. But, to return to our Canongate Theatre. It was therefore determined to dispose of the theatre to Mr. Lee, an actor of eminence, and at that time a deserved favourite of the town. The price paid for it was 648l. and 100l. a year during the life of the surviving lessees. Mr. Lee having, by reason of the sums he laid out on his newly acquired property, and from *other causes*, fallen into arrears to tradesmen, certain judges of the Court of

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royal youth, indeed, could stand it no longer, but retired at the end of the fourth act, and returned again to see the entertainment, when the fifth was over. His companion remained, but was the whole time drowned in tears, which had such a sympathising effect on the audience, that few were there but joined them.

Session, and other persons of distinction, sixteen in number, interposed their credit in Mr. Lee's behalf; but with a view to their own security, obtained from him a deed of conveyance of his property. Lee being unable to discharge the debts, *these gentlemen* seized the theatre for their indemnification, turned out the man whom they had proposed to befriend, appointed a Mr. Callender, a merchant in Edinburgh, to *act* for them; and engaged Mr. Digges, who was then at Dublin, to supply the place of poor Lee.*

* Mr. Lee had played with Mr. Garrick for some time at Drury-lane—Garrick had observed in Lee, even in the performance of inferior characters, what raised his envy; and having him under articles, he ungenerously allotted him parts unsuited to his talents. The town perceived his merit, under the oppression which he suffered from the manager, yet no one of consequence thought proper to interpose with the jealous di-

Lee complained heavily of these proceedings of the gentlemen who had seized upon his theatre. He insisted

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rector in his behalf. When the management of the Edinburgh stage was proposed to him, with a flattering prospect of making an ample fortune, he gladly undertook the pleasing task. The negotiations on this business were carried on with such secrecy and dispatch, that Garrick, who was seldom at a loss for theatrical intelligence, was a total stranger to Lee's Scotch engagement, till he learnt it by the following accident. Lee, on his journey to the north, to take possession of his new management, stopped at an inn not far from Belvoir-castle, the seat of the Duke of Rutland. He ordered a fowl for his dinner; and while it was getting ready, Garrick, who was going on a visit to old John of the Hill, as the Duke was familiarly called, put up at the same house for a hasty refreshment. On seeing the fowl at the fire, he expressed a wish to partake of it; being informed it was for a single gentleman traveller, who had ordered it, the landlord was desired to ask permission for another gentleman to partake with him, as the bird was a pretty large one. Lee assented

that the conveyance granted by him, was merely a mode of security, and not a *deed of sale:* that he had been imposed upon, as well in the form of the writ as in the price specified; the latter being no more than 500l. while the property was truly worth 1700l. To obtain redress of his grievances, Lee brought an action before the Court of Session, and a party was formed to oppose warmly the new managers. How-

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to the proposal—and enter Garrick! The wierd sisters never startled the bold David more.

"What! Lee! is it *you?*"

"John Lee, at your service, sir."

"Service! eh!—Where are you bound for, Mr. Lee?"

"Sir, I am now going to the north."

"North!" said Garrick, "What should you do in the north, when you should serve your sovereign in the south?"

"Sir," replied Lee very modestly, "I am going to be *sovereign* myself."

ever, after two or three pleadings, the action was dropped; and Mr. Digges's figure and *smooth address*, (the latter quality never forsook him, even when bent with age and infirmities), defeated the opposition.* But the true cause

* The late Mr. Digges was an extraordinary man indeed! Bred up in high life from his first entrance on this world's great stage, his manners were easy and unembarrassed; nor was he ever known apparently to be the least affected, when the greatest seeming difficulties have occurred. What would render others of more vulgar notions of life truly unhappy, gave him not the least disturbance. Of so happy a disposition was he, that though involved in many debts, and to a very considerable amount, he neither feared "a bailiff or his writ." What felicity! what true philosophy! Had the many thousands who languish now in durance, been possessed of the happy arts of defeating every attempt of their ruthless creditors to immure them, as Mr. West Digges so successfully played off on every emergent occasion of the kind, they would have ample cause to bless

of Lee's defeat was owing to the following circumstance: Mrs. Ward, choosing to quit London, and try her fortune in Edinburgh, where she had made her first *debut* with the company in Taylors'-hall, had for some time before eloped from her husband, and formed a connection with Mr. Digges, a gentleman of an excellent family, who, having disobliged his re-

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their propitious stars. But, alas! that unaccountable, that indescribable something, is not the general gift of humanity. Mr. Digges's manners and conversation were of the most fascinating qualities; no man of ten times his income lived in a more sumptuous style, as to the articles of luxury appertaining to the table; of this many worthy tradesmen of Dublin, Edinburgh, and many other towns and cities were well convinced of. That excellent casuist, the sage Hudibras, says—"No argument like matter of fact is—

> And we are best of all led to
> Men's principles, by what they *do*."

lations, went over to Ireland in the quality of an actor, and succeeded so well there, that Mr. Sheridan gave him 300l. for his first year, and 400l. for his second. Digges, however, could not live upon any such income, so was obliged to leave Dublin through insolvency, and lived for some time on his shifts in London; till he was persuaded by Mrs. Ward to try new ground in Scotland.

It was at this time that Lee's embarrassments began; and this actress, who was personally acquainted with many of the proprietors, had art enough to persuade them to give no quarter to Lee, as she had brought with her a better actor, a person also known to them, as he had been there, before he went on the stage, in quality of a subaltern officer in a marching regiment. The proprietors complied with her re-

quest; threw their manager, poor Lee, into prison; and drew forth Digges from a private lodging, where he lay concealed, and announced him at once for Hamlet. In this character he succeeded with so much eclat, (before a most brilliant audience, among whom was the late Duke of Hamilton, and other noblemen), that Lee was compleatly ruined, and Digges retained in Scotland. The fame he then acquired continued even to the hour of his death; though, both as actor and manager, he experienced many vicissitudes of fortune. His natural propensity to every kind of extravagance, did not permit him to continue the whole of two seasons in this situation. The joint talents of Mrs. Ward and himself, brought an ample receipt to the theatre; the assistance of Love, Stamper, Griffith and Lancashire, doubtless, concurred in the success.

After the second year, he again left Edinburgh, where he found himself between three and four hundred pounds involved in debt; the major part of which was due to a Mrs. Crassaw, an old broker woman of an extraordinary character, and well known to all the nobility in Scotland. After his retirement, he shifted for some years without going on the stage; during which interval, Mr. Love, belonging afterwards to one of the London theatres, and Mr. Callender, acquired the management of the Canongate theatre. These, like the rest, succeeded in the beginning, but soon grew weary of their undertaking. During their administration, ending in the year 1761, Digges returned again, in the face of his debts, about the end of the winter season, and played during the summer sessions. What encouraged him to this undertaking was, the cir-

cumstance of his having formed a new connexion with the celebrated Mrs. Bellamy. The first thing, on his arrival, was to deprecate the wrath of mother Crassaw, his principal creditor—like Sir John Falstaff with Dame Quickly, he immediately sent for her, and succeeded so well by his usual blandiloquence, that she agreed to supply him with a new sum to begin upon; but not till he had satisfied her as to his new connection, for she had been very fond of Mrs. Ward,* his former one.

* This lady was capital in Lady Randolph; the play of Douglas was brought out in Edinburgh, in 1757, and illumined the theatric hemisphere. As the author of this masterly production wrote on the side of virtue, it remains to this day inexplicable why an inflammatory spirit should have arisen against him in his own country. The presbytery of Edinburgh banished him the church.

It may however be some consolation to him, that whenever his play of Douglas comes before

In short, he was obliged to kneel, and swear on the bible, that he had been lawfully married to Mrs. Bellamy ;* a pretty good stretch that, for a man who would never dine without saying grace, and frequently repeating it twice the same meal, for fear of having forgotten.

Mrs. Bellamy, who was a capital ac-

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the public, it meets with the warmest testimonials of approbation ; and that many of the auditors are sent home, if not better men, at least sensibly alive to the loveliness of virtue. The ingenious author meets the universal admiration of all true judges, who will venture to assure him, that whatever anathamas his brethren may pronounce against him, the excommunication will be taken off in the court of Parnassus.

* This declaration of his to Mrs. Crassaw, was directly opposite to his real sentiments respecting a *legal* union with the fair ; for, when Mrs. Bellamy would sometimes urge him upon that subject, his reply was, " Madam, I give you leave to treat me like a foot-pad, rob me and let me go, but don't tie me neck and heels."

tress for those times, together with her *cher ami*, succeeded so well, that he was enabled to live in the sumptuous manner which suited his taste. Mr. Love soon grew weary of his undertaking, and Mr. Callender was compelled to seek another associate.

There was a man of the name of Mr. David Beat, well known in the city of Edinburgh, as having in the year 1745 proclaimed the Pretender at the city cross. This man and Callender patched up an agreement with the proprietors; but Callender in a short time thought fit to leave the whole to Beat, who having no stock to proceed upon, contrived to persuade one Dawson of Newcastle, who kept a carrier's inn, and in a low way scraped together a tolerable sum of money, to undertake with him the joint-management.

During a great part of this hopeful

management, the mellifluous Irish Theocritus, piped in *Edina* on his oaten reed. This was the celebrated pastoral poet, Mr. John Cunningham, who had, like Mr. James Lacy, entirely mistaken his talent, by exposing himself upon the stage. This elegant rival of Shenstone was often provoked to descend to doggrel rhymes on the name of his Edinburgh residential manager, being not much at a loss to find that *Beat* and *cheat* made a charming jingle; and having *reality*, not *fiction*, like most other poets, to stand by him, his satire was sensibly felt. The confusion into which the theatre fell, speedily evinced how little Messrs. Beat and Dowson were qualified to conduct it. Dissensions arose among the performers which the managers were unable to allay.—There were, unhappily, two firebrands of discord and dissension in the com-

pany, who would make no bad figure in the present jacobin club in Paris, were they now in existence. These were the well-known Mr. George Stayley, and Mrs. Elizabeth Erskine Baker, both flaming writers, and both equally dissatisfied at their situation in *this*, as they were known to be in every other community to which they had belonged. After dividing the town and university, who became dupes to their animosities, into two parties, and having exhausted all their rancour at each other; not forgetting to bespatter several worthy characters who had taken different sides in their literary sparring-match, the affair came to a drawn battle. They shortly after separated, and betook themselves to different and distant apartments in the town, where they applied themselves to instruct the natives in the proper pronunciation of

the English language. Each party, as I said, had their friends among the public. The gentlemen of the long robe took a deep concern in the quarrel, which had at length become general in the *devoted* company. The students of the university scorned to remain neuter, while so much *fun* was going on; and, in a riot which ensued, the Canongate-theatre was totally demolished; and the giddy-headed performers, who had drawn this ruin upon themselves, were left in extreme necessity.*

* In remarking the singular propensity of the young students of the universities to render themselves conspicuously riotous in places of public entertainment, I cannot omit relating a curious circumstance which occurred at Huntingdon some years ago, in consequence of the impetuous and unwarrantable conduct of a certain nobleman, who has lately paid the debt of nature.—The honourable Captain Montague, about the

By the incident we have now related of the demolition of the Canon-

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beginning of the year 1753, canvassed, with great success, the electors of Huntingdon. A company of players under the management of one Quelch, luckily for himself and his troop, came thither from the town of Oundle, in Northamptonshire; and opened in a barn, at the lower end of the Crown-inn-yard. Their first night was bought, and payed for, by the honourable candidate; he allowing them to fix their own sum, or what they thought the house would hold at their prices.—They demanded only what he would please to give them; on which he very generously sent them twenty guineas, with orders not to take money from any other that should offer it, nor to admit any person whatsoever into the play-house that night, without a ticket signed by one of his special agents, whom he had appointed to stand at the door. This night's entertainment was designed as a compliment to the voters that were in the Captain's interest, with their wives and country cousins. But poor Quelch, without any other design than to promote the interest of his company, had, before this order came to him, dispatched a

gate theatre, and which happened in the year 1766, Drury-lane obtained a

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person to Cambridge, to distribute bills among the several colleges; and, on the evening of the play, several bucks arrived from the university, attracted by so uncommon a thing as a country-play; especially so near Cambridge, the two places being but sixteen miles distant from each other. Several of the young gentlemen went down to the theatre to take a survey of it. The stage-keeper was sweeping it out, who informed them, that the play was actually purchased by the honourable Captain Montague. "Damn his honour," says a certain juvenile northern Baronet, whose guardian dealt largely in the coal trade to Ireland—"Who is this Montague? and what in the devil's name have we to do with his bargain, if he has bought the souls and bodies of your whole crew? Are you the manager, friend?"

"No, please your honour, I am not; the manager is my master, and as honourable a gentleman as ever got his bread by travelling the country in *this here* way of life."

"O ho! is he so?" says one of the bucks;

very good actor and worthy man, Mr. James Aickin, whose first appearance

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" and pray, friend, is your honourable master in the barn now ?"

" No, sir; this is he coming down the yard."

" Well, sir," says Sir James, " I understand you are director of this theatrical business here."

" I am, sir."

" And what are your prices ? I see you have not erected any boxes ; so what's your pit price ?"

" Why, really sir, we are so circumstanced on this our first night, that we dare not take any money, except we get leave from the gentleman who was so good as to engage the whole house on this occasion."

" O ho ! you dare not ? Then, pray Mr. honourable master, as your sweeper here calls you, how dare you send your play-bills over to Cambridge, to invite us hither ; and now that we are come, to tell us there is no admittance ? Does not your travelling honour think you deserve a sound horse-whipping for such behaviour ?"

" Indeed, gentlemen," said poor Quelch, " I am at present more an object of your pity than your resentment. Pray do not suffer your wrath

in Edinburgh was on the 23d June, 1759, in Horatio in Hamlet; and who

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to predominate over your humanity, so far as to mal-treat a man who is not intentionally wrong in this business: therefore, dear gentlemen, as you *are* gentlemen, and scholars, suffer me to plead in bar, to the chastisement which you in your wisdom think I merit."

"Hear him! hear him! hear him!" cried out three or four of the blades: "Damme, Sir James," says a buck, "we shall find at last, that our honourable traveller has more trades than one: he is a pettifogger, a player, and has a damn'd twang of the methodist. Well, my funny disciple of Whitfield, how do you propose getting rid of us scholars, as you were pleased to say we are, without finding us accommodation in your crazy barn?"

"Why, good gentlemen, if you will please to suffer me to step off to Hinchingbroke-castle, I make no doubt of his honour, Captain Montague, giving you leave to seat yourselves in any part of the house you may think proper."

"Worse and worse," cried they all; "Why you rascal!" says the prolocutor, "have you the

quitted Edinburgh in disgust, and went to London, where he has remained ever

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impertinence to think, that we would accept of any such favour from mad Montague? Come, Sir James, let us muster our forces, and storm this frail out-house; we'll make a forcible entry, Mr. Lawyer, into your premises, if you do not, upon payment, give us quiet possession for the night."

Off they went, and returned to the number of thirty-five. By this time his honour's agent had taken his post at the door; who, being informed by Queleh, that the *bloods* meant to kick up a dust, if they were refused admittance; on their arrival, very politely invited them to enter, and chose their seats. Upon this each of them produced his half-crown, and offered it in payment for their seats, which the gentleman refused very modestly. "He would not," he said, "injure his employer's honour, by accepting of any thing in the shape of money, on this occasion. I am certain, gentlemen," said he, "that the captain will be highly pleased, that it was in his power to oblige you."

"Prythee, friend," said one of them, "don't stifle us with your fulsome elogium on the urba-

since an ornament to his profession. During all this time, the gentlemen

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nity of your employer. Will you take our money?"

"I really *dare* not; nor will not, gentlemen."

"You won't? Will *you* take it then, my crab-faced methodist?" to Quelch.

"O Lord bless you, sir, I *durst* not for the world."

"You durst not, and you dare not! what is all this? Damme, they play into each other's hands. Well, my pert limb of the law, though you have sold the front of your house, there can be no *demur*, or *pleading in bar*, of our being accommodated behind the scenes, eh! can there?"

"Not in the least, gentlemen;" said the captain's agent.

At this they flung down their money at the door, and mounted the stage.

It happened that the beautiful and accomplished Miss Naylor, a niece of the Earl of Sandwich, graced the front seat of the pit; and though there were many town-bred ladies, and several rural beauties in the same *parterre*, she by far excelled them all. When the curtain was drawn up, it

who had obtained a conveyance from Mr. John Lee, remained proprietors.

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discovered the stage crowded with scholars, *sans* caps or bands. High in the front appeared the northern Baronet, overtopping all his fellows—he gazed for some time on the beautiful bevy before him. It was not long, however, till he fixed his sole attention to the captivating charms displayed by the lovely Miss Naylor. He fell directly into irresistible love with her. He inquired of the waiter from the Crown, who was serving the gentlemen with wine behind the scenes, the lady's name and family; and received a circumstantial account of all he wished to know. When he was informed that her father was but a private gentleman, of no great fortune, this last part of the intelligence caused the enamoured baronet to cry out to his companions, "*She's mine*, my boys; she's mine. Come, let us step into the Crown, and I'll tell you all about it."

And here I must remark, that guardians, who by their imprudence, and testators, who by their over indulgence, throw large appointments into the hands of young gentlemen at colleges, before they can be reasonably supposed to make proper

They found themselves at this period involved in a debt of 900l. on account

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use of them, are highly blameable, and have much to answer for. Enormous allowances of cash to such as are out of the guidance and controul of their elder relatives, too often render them liable to be surrounded with a numerous tribe of sycophants and dependents; such as go under the honourable appellations of *Led-Captains*, *Yellow Admirals*, *Parasites*, and a long *et cetera* of such scandalous titles: and these horse-leeches will very often undertake the most infamous jobs, to administer to the vices of their patron. Now it is well known, that there are many *poor* scholars in our universities, whose ambitious, though indigent parents, prompt them to send their boys to a college, in hopes they may have a chance of one day running their heads against a pulpit; when, if they had but common sense to discern, their favourite boobies would be more *at home* holding a plough by the tail: with a set of the latter cast was the northern baronet continually surrounded, when out upon a frolic. And these gentlemen of ready compliance were those whom he took to the inn to break his mind to. He declared he would

of the theatre, without the shadow of a property to discharge it. They brought

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have her, cost what it would. "And so you shall, my prince," said they, *una voce*. "Damme, we'll carry her off this night, or perish in the attempt."

"But, damn it," says the baronet, "how shall we manage to elude the vigilance of the big-wig plenipotentiary,* and the mad-cap nautical savage his brother."

"Let me alone to manage them," says a legi-

* Lord Sandwich, at this period, wore a prodigious large wig; and it may be necessary to inform my readers, that not only our nobility in general, but our opulent citizens, and provincial tradesmen, wore wigs of such a prodigious size, in common, that were we moderns but to behold our ancestors in the dresses in which they appeared in the year 175-, they would take them for so many theatrical Brutus's, Cassius's, Cato's, and Marc Anthony's. Wigs of any sort, are doubtless absurd in characters who are supposed to be Grecian or Roman, or even heroes of any kind. I remember, however, that great stickler for propriety, Mr. Garrick, in the scene following that in which he is chosen king, in Macbeth, came on the stage with a wig as large as any worn now by the gravest of our barons of the Exchequer.

an action of damages against the young gentlemen concerned in the riot, in

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timate descendant of the redoubted Noll Bluff of terrific memory : " Do you see this? (shewing a *coutleau-de-chausse*) Here's sweet lips, that has carved many a calf's head for me ; and, as Othello bravely says, ' has made its way through twenty times their stop.' Come, let's back to the barn again—don't let this matter cool with us."

" The signal for attack," said the baronet, " shall be, *now or never*."

" Enough said," cries Noll. With that they went to the place of action. But the most material part of the consultation, and the dire resolution formed upon it by the members of this black *divan*, was luckily overheard by the waiter who had attended them behind the scenes ; guessing the fabrication of some mischief, from some indiscreet expressions that fell from those who remained of their company in the play-house, he slipped out after the conspirators ; and after setting a bottle of wine before them, shut the door on them, and took his silent stand to listen to their discourse. Few words passed before he was perfectly satisfied as to their villainous design on the delectable Miss Naylor. This dark plot being

which their property was destroyed. The latter, with great address, travers-

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thus discovered by the trusty waiter, put the parties concerned upon their guard; and when the signal was made, and the infamous scene began by Noll, Captain Montague laid hold of him, while his lordship caught up the young lady, and lifting her on the stage recommended her to the care of the ladies of the company, while he went to procure the powerful assistance of the mob, who were by this time gathered about the theatre; and a furious mauling did the valourous *Cantabs* receive upon this memorable night. Some were dragged through a contiguous horse-pond, while others were trampled under foot by the exasperated populace, both men and women joining in this piece of justice. But bully Noll being, by particular desire, left to the sole handling of the courageous son of Neptune, who gave him a dressing, worse than a couple of round dozen at the gangway; his *coulteau* was broken, and with the hilt of it two of his white fore-teeth sent down his throat. Thus mutilated, this Hector was consigned to the discipline of the *lettermost* sort without doors, with a kick on that part that Hudibras humourously calls "the seat of honour." But what be-

ed it, by a counter-action against these proprietors, for having plays acted in

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came of the young baronet? the contriver and grand promoter of these disasters? I will inform you of that too, otherwise our story would be manifestly imperfect. When he saw his party so roughly treated, at the first onset, he slipped out of the house, called for horse and servants, and rode off without once looking behind him, till he got within sight of Cambridge. His honour has been looked upon as the very Nimrod of the north for very near forty years past; but I shall not confine myself to his single horsemanship, but mention another trait equally amiable. Upon attaining the period of majority, he entered fully upon his vast estates, many of them lying buried in coal-pits, in the counties of Cumberland and Westmoreland. The alarm was shortly afterwards spread, that a few public-spirited gentlemen in Ireland, on the discovery of coals being found in their domains, had published resolutions to proceed with patriotic vigour in making the most of their long hidden treasures, for which purpose they invited a great number of miners from England; men, who though they have not a single idea that reaches beyond the

their house contrary to act of parliament. Many of those proprietors were

knowledge of their profession, which is confined to parts impervious to the sun's beams—yet are skilful above the inhabitants of any other nation, considered in that confined light, or rather *darkness visible*. This encouragement being proposed by the natives of our sister kingdom, to a body of men of the above description, had no visible effect on the worthy Mr. Curwen, of Workington, who was well known to be greatly concerned in the Irish coal-trade: his sentiments were of too liberal a cast to endeavour to infringe on the native rights of any country, however he might be a sufferer by their exertions. Not so was Nimrod affected; for it is well known to many now living in the north, that this blustering Hector swore, that if the *broguencer* scoundrels should attempt to pierce their mother earth deeper than might be supposed to give shelter to a fox or a badger, he would find a way during their further trials and experiments, of perishing the whole of the eastern coast thereof, from Belfast to Wexford. Notwithstanding this unprovoked threat, some gentlemen of the counties of Tyrone

now raised to the *bench*; hardly a quorum remained to decide the questions.

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and Antrim, persisted in their rash purpose of improving their fortunes. Nimrod on this grew quite outrageous—reproached and vilified the better part of the *inula sacro-sancta*, and called it an *island of devils*. The *ardens verbum* was too often at the end of his tongue, which was made use of frequently without even common discretion. But one example will serve, as well as a thousand, to shew this hot man in his proper colours. At the general election in 1768, at a meeting of the gentlemen, clergy, and freeholders of Cumberland, at Wigton, he would obtrude two knights upon them, who were both unpopularly disagreeable to them. They modestly offered to chuse *himself*, provided he would not interfere with their choice of another. "Audacious slaves," said he; "who am I?"

"Our representative, Sir James, if you please," replied the chairman of the meeting.

"Ye common cry of curs," said he; "*your* representative—shall I?—Why, you contumacious parcel of reptiles, to shew you I despise your septennial power, I'll set up a couple of my

The ludicrousness of the case was perceived, and both actions were dropped.

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coach-horses, and you shall chuse *them:* my cattle are as well bred as the Emperor Caligula's were, and he made a senator of his favourite brute, so will I of mine; look to it—I am in earnest."

"And so are we," replied the worthy chairman. "For your insolence on this occasion, neither you nor your favourite men, nor cattle, shall be returned for our *now* independent county." With this menace they broke up for that day, and the electioneering of this memorable year cost Nimrod to the tune of *two hundred thousand pounds*, as commonly reported. However, his descent upon Ireland was not so unfortunate in 1758, which preceded his defeat at Wigton ten years: for there he threatened the government with shutting up his coal pits in the neighbourhood of Whitehaven, without further notice, if an immediate stop was not put to the northern mines of that kingdom. It is not very long ago he actually did shut up his mines, because an honest jury condemned his *dirty work*, and protected the property of his neighbours, when he shook their dwellings to the centre; nor would he open them

The Edinburgh theatre had hitherto been carried on contrary to *law*, under

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again till he had procured a long string of names to indemnify him, should his subterraneous manufactures bring on another temporary earthquake. But he has now, we understand, ordered his human moles to work his ebon regions, by cutting the horizon at right angles, so that in his perpendicular grubbing to cram his already bursting purse, we may in time hear of his shaking the foundation of the nether globe, and our courts of justice filled with antipodean briefs. As I have observed, in 1758 he threatened to disfuel Ireland, and from Dublin drove his phaeton, *jehu-like*, throughout the whole of that devoted realm; advising them, at their peril, not to insult him with their newfangled projects; and with unparalleled insolence, desiring them to seek no further for fuel than for what they may easily procure from their numerous *bogs*. In what cavern was the native spirit of the Irish hid, when this coal-merchant came among them to insult them thus? Were the champions for freedom and independence all asleep, when this defier flew through their country like a meteor, charged with noxious

the evasion of *a Concert of Music, with a Play between the several parts.* Now it was resolved to apply for the authority of parliament for a licence: for this, the bill preparing to be presented

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vapours to blast their fruitful land? The truth is, it was a somniferous moment, when the native lords of mines caught the contagion he wished to spread, in a well-timed, regular, systematic progression; not only private consideration was lost at that drowsy period, but the steady pulse of national interest yielded to the power of monopoly. In this kingdom, when the dangerous doctrine of obsolete claims in the crown was revived, old *nullum tempus* was brushed up to dispossess the Duke of Portland of his rights and property, of the forest of Inglewood, and soccage of Carlisle; and had not an incorrupt jury, and a virtuous and unawed bench of judges, interposed and decided in his favour, the northern baronet would, by his *Graftonian* treasury warrant, have been put in possession of those desmesnes, to indemnify him for the great expences he incurred by the general election the year before.

for the extension of the Royalty afforded a ready opportunity. A *clause* was added to it, enabling his majesty to license a theatre at Edinburgh. The expence of this additional clause was defrayed by the gentlemen proprietors of the old theatre; and the patent was taken out in the name of Mr. Henry Davidson, solicitor at law, their attorney. Although the public concerned themselves deeply in this business, no one adverted to the consequences of that mode of taking out the patent. And when *candidates* appeared, all were surprized to find the sole disposal of the patent vested in these gentlemen. But they were still more alarmed, when they found that the new patentee was to be loaded with the whole debts affecting the old Canongate theatre. The candidates were Mr. Lee, and Mr. Ross of Covent-garden theatre. A violent

contention ensued: the first, as a much-injured man, enjoying the public favour; but the last had a majority of suffrages among those who had invested themselves with the disposal of the patent. To Ross it was given accordingly, upon his paying 1100 pounds to the old managers, being the amount of the *whole* debts and expences incurred by them.

Ross was assisted in this business by a Mr. Bland, the son of an eminent civilian in Ireland, who arrived to be judge of the Prerogative Court in Dublin. This gentleman having come at that time to Edinburgh to pay a visit to some of his Irish relations who had settled there; and having in his younger days been on the stage, both in London and Bath, he lent Ross a large sum of money, and became a partner with him in a fourth of the concern, which

amounted to about 1600l. They succeeded so well the first year, that Ross determined to buy off Bland's share, which he effected by agreeing to give him an annuity of 100l. with a benefit each year, on a Saturday in the month of February, for 25l. charge. Thus did the old proprietors get themselves *handsomely* out of a scrape, into which their *excessive* fondness for theatrical amusements had unwarily drawn them.

Ross now, by means of a considerable lift from Bland and his lovely companion, the celebrated Fanny Murray, became sole patentee. A royal theatre must be erected. The spot pitched upon for the purpose was in the extended royalty, at the north end of the *curious* new bridge, the most eligible situation possible: but before the theatre was compleated a heavy misfortune befel it—the downfall of the

bridge cut off the communication between the theatre and the city. The theatre was began in the year 1768, and opened in 1769. The prices of admission were raised to three shillings the pit and boxes, two shillings the gallery, and one shilling the upper gallery, as in London. The manager paid little attention either to his own interest, or the amusements of the public. He had few good performers; and although the city was disposed to countenance the theatre, he made few efforts to gratify his patrons.

But though Mr. Ross made no great stir to engage performers for the ensuing winter, his perpetually drunken prompter, Heartley, kept on writing to people, who regarded his letters of proposed engagements, as they deserved, with contempt: and the excuse that Ross made for opening with so indif-

ferent a company was, that no performer of eminence would engage, on account of the fallen bridge. To the badness of the company was joined a dislike the public had of him, not for his want of merit as a performer, but for his indolence and his neglect of the duties of his station as a manager. His success not being suitable to his expectation, he let the theatre for three years to Mr. Foote, who, with Messrs. Woodward and Weston, at the head of a good company (whose combined salaries amounted to near 100l. per week) opened the second season of the new house; and after paying the proprietor his rent, cleared upwards of 1,000l. But as Edinburgh lay at an inconvenient distance for a person in Foote's situation, so he conveyed the lease to the old manager, Mr. Digges, in conjunction with Mr. Bland. Digges was

then an actor of such fame in Edinburgh, that on the first night of this his *third* essay, he brought 120l. to his Macbeth, though there was not one lady in the boxes; which, though true, was somewhat extraordinary—this was in November, before the time they generally make their appearance in the boxes; yet do I say it was extraordinary, as he was always a favourite with the fair.

Digges had now many difficulties to encounter, being above 700l. in debt in Edinburgh; however, his old friend Bland procured him a supersedure from his creditors, on agreeing to pay them 100l. a year; by this means he contrived to hold out till the year 1777—five years in all—that is, since his and Bland's taking the lease from Foote in 1772. The last three years he held it alone by lease from Ross, for security

of which Bland's annuity became bound, and in the result was forfeited for an arrear of 700l.

At the end of Digges's first season of Foote's lease, which turned out a very great one; he, so early as the middle of the month of January the following season, found himself so far behind-hand, that he was obliged to call in the assistance of Mr. and Mrs. Yates, the first objects of magnitude that had ever visited Scotland—he gave them for the remainder of the season eight hundred pounds, two hundred pounds of which he got by subscription from the gentlemen of the parliament-house, and this engagement made it barely turn out to be no losing season; however, as mentioned before, he struggled on till the year 1777, at which time his debts pressed him so hard, that he resolved on the measure of taking out a

cessio bonorum, a method used in Scotland to get rid of debts, similar to a statute of bankruptcy in England. In short, he just mustered up resolution enough to enter the Canongate-prison. On this account, at the top of the play-bill that announced the comedy of the Stratagem, on Saturday, the 25th of January, 1777, stood the following address :—

"THEATRE ROYAL.

"The *Manager* of the *Theatre Royal* begs leave, with the utmost deference, to express his sincere concern at the unhappy absence he is at present compelled to submit to from the duty of his station.

"As the conduct and care of the Theatre of this kingdom has been his invariable *study*, at the expence both of his *health* and *fortune*, he trusts that the generosity and candour of the audience

(which he has so constantly experienced) will not desert him at this anxious and serious crisis.

"Whatever may be his private sufferings, the public entertainment shall be still attended to with unremitting industry. Therefore, during the unwelcome suspension of his own personal labours, he has employed Mr. Woods, a gentleman of merit and assiduity in his profession, to superintend the business of the stage; and if the industry and endeavours of his company are doubly exerted (as he flatters himself they will be) to do more than compensate for his absence, he hopes the consideration and munificence of a generous public will not suffer his misfortunes or losses to be aggravated, by the theatre's experiencing either neglect or distress."

A few weeks previous to this imprisonment, he had received a young woman in trust, the wife of a merchant in Glasgow, who had eloped from her husband with the principal magistrate of that city. He, Digges, conceiving, that in "*deceiving deceivers, deceit grows just*," broke his trust, escaped from the prison, involved the jailor, and took off the lady.* He left Edinburgh about 2000l. in debt, 1300l. of which was due to his friend Bland, who never received a penny of this large debt, and was consequently ruined by it.

Bland was now obliged to manage for himself, the term of the lease not

* This was his great fault—he was a general lover; for

He would change his girls as he would his meat,
Yet tell 'em all he lov'd 'em well;
When he had crack'd the nut, and the kernel ate,
He then would fling away the shell.

being yet expired; but the first season failing, he let it the year following to Signor Corri, an Italian (well known in the musical world), who was so much involved when he began, that by paying old demands instead of his salaries, he in one year left fifteen weeks arrear to almost every performer in the theatre.

The next year Ross let it to Mr. Wilkinson, manager of York, who only kept it open one season, with little profit: in the beginning he was a great loser, but by paying the salaries regularly out of his own funds, he so ingratiated himself with the public, that they took it into consideration, and then gave him such encouragement during the latter part of the season, that upon the winding-up he was a gainer.*

* 1. I cannot help noticing in Mr. Wilkinson's very interesting Memoirs, the *doubt* which he entertains of *players becoming holy spirits*, "after they

The year following Mr. Ross joined himself with a Mr. Heaphy, who had been long manager of the Cork theatre

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have put on immortality;" for, in speaking of Macklin, he says, "If any such there are (holy spirits, mind) they will surely hail Macklin's relief from this temporary abode of toil and sorrow." Now, this *doubt* of the players that *had* made their exits (for he wrote this long before Macklin died) being holy spirits, and the *no doubt* of Macklin's being a holy spirit, when he *should* make his exit, is not very liberal surely, for this is the natural conclusion—that Macklin would certainly go to heaven, and that there would be no players there to meet him. I wish Mr. Wilkinson may not be deceived with respect to his favourite Macklin; but I am afraid he will ultimately find him in devilish bad company.

2. If a painter wanted a stern, sour countenance for the left-hand of a *Resurrection-piece*, Macklin was always a fine subject. In his manners he was brutish—he was not to be softened into modesty either by sex or age. I have seen his levity make the matron blush—beauty and innocence were no safeguard against his rudeness,

(in Ireland); this season turned out very indifferent, insomuch, that Ross, on some one of the last nights, went clandestinely to the doors, took away the whole receipts of the house, and set off directly for London; leaving his partner, Mr. Heaphy, an honourable gentleman, to get out of the scrape as well as he could.

Soon after this season, the year 1781,

"at which the soft-eyed virgin has been cruelly obliged to shed the tender tear." His natural rudeness was thus far of use; it always gave to patience and good manners an opportunity to temporise. When he entered the list of controversy (for he was one that would dispute on any subject with sir Isaac Newton), he could only defend his opinions by dogmatic argument, and then, so oratorically clumsy, as shewed he could neither polish a paradox, or illustrate truth.—What Danton said of Marat may be applied to him: "He was volcanic, peevish, and unsociable."

it was let to one Jackson, an unnoticed stage-pretender: during Ross's management we find him among the list of his actors; from what motive I could never learn; but either from inability or inattention in the actor, or pique in the manager, he was forfeited by Ross about 70l. During Ross's absence he brought his action in the Scotch courts, and actually recovered the sum against him—with this *cessio bonorum* he sallied forth to London; and it is worth remarking, it was the sole instrument that placed him at this moment in the situation of manager; for, with it and the costs of suit, he threatened Ross, who, in the moment of inconvenience and indolence, for a very inadequate annuity, resigned his interest in the Edinburgh theatre to Jackson, the renowned knight of the sock and buskin; who, at the present

period (March, 1793), has provoked a thousand persons of the first respectability and consequence in Edinburgh, to petition his Majesty to remove this Breslaw of a manager, that could with so much dexterity convey the patent, first from himself to the Duke of H—, then from the duke to his creditors, and finally, from them to himself.—This observation the reader will find illustrated by what follows. Jackson's art of management was so contrived as to make it a most profitable concern for near eleven years. I have heard his friend Mr. Bland say, that he did not clear less than a thousand a year on an average; yet, at the end of eleven years, he so *managed* as to fail for upwards of eleven thousand pounds!—What! cater for the public eleven years, and turn out so bad a cook as not to lick his fingers all the time!—" *Credat*

Judæus Appella!"—For my own part I dare not believe it, for fear of making too bold an incroachment upon my reason. The sun may shine upon a *dunghill*, but it cannot sweeten it. To be sure, to those unacquainted with the stage, this may appear extraordinary; but it is amazing the vast sums of money that are sunk in *roofing theatres*, *painting stage doors*, and *sinking traps!* "* And when a man is emulous to see the theatrical arrangements of Scotland on as consequential a footing as the respectability of the audience deserved; and when, with this view, he forms plans for their accommodation, as well as their amusement; for which purpose he expends every shilling he could procure, and stretches his credit to the uttermost, in order to promote this desired object," it is no wonder a

* Jackson's own words.

bankruptcy should be the consequence, and that general pity should follow the man thus ruined in the public service; but I never heard that their pity ever extended so far as to wish him again to be *arbiter elegantiarum*.

At the period when his creditors advertised the theatres of Edinburgh and Glasgow to be let by public auction, Mr. Stephen Kemble and Mrs. Esten were the two candidates (on the second of November, 1791). Jackson supplicates Kemble to take the theatres for one year, to prevent Mrs. Esten becoming the lessee, whose influence he dreaded, fearing, if she once got the theatres into her possession, they would never revert to him again: but it is natural to ask, whence those fears should arise, after telling his creditors that the scheme had ruined him, or why then make choice of Mr. Kemble

instead of Mrs. Esten? But *most truly* thus it was—he tells Kemble not to start at the rent it might be run up to by Mrs. Esten (or her agent Mr. Williamson), but to take it at any rate; and farther to encourage him to it, says, "I shall have it in my power, I hope, to settle with my creditors before the next year, so as to prevent the two theatres ever being let by auction again: and as long as I may have any concern in them, you shall be my partner, as I prefer you and your connections to Mrs. Esten; and further, if you take the theatres (fear not the rent), I will find you security for one-half of the rent, and become your partner in the concern; that is, from the second of November, 1791, till the second of November, 1792."

"Well," says Kemble, "I have no objection to meet you on those terms,

let this business be committed to paper." Missives passed between them, the day of sale approaches, and Kemble takes the theatres for one year, at the enormous rent of 1350l. The time comes when Jackson is to bring forth his security for the half of 1350l.—Kemble objects to the security as not being sufficient. Jackson insists on his taking it. Kemble continues to refuse. This dispute between them goes by the consent of both parties to arbitration, and the arbitrator is the Dean of the Faculty of Advocates, who not giving his decret-final till within a few days of the close of the season, and Jackson having often troubled him on the business, by which he learned that he could not get rid of the partnership with Kemble, he was determined to defeat the equity of the decree, and to let the theatre for the ensuing season

privately to Mrs. Esten, to the injury of Mr. Kemble, the partner of his choice. To accomplish this, Mr. Playfair, the trustee for Jackson's creditors, goes to London, and lets the theatre to Mrs. Esten for 200l. less than what it was let for to Kemble by public roup; and it must be particularly observed, that Jackson had, before this transaction, settled 10,000l. of his debts, by finding security for 5,000l. to pay those 10,000l. creditors ten shillings in the pound, which they had consented to take!— Well, nine days after this *honest game*, which was *played* so *fairly* with Mrs. Esten, out comes the Dean's *decret arbitral*, which I shall omit inserting here, as the substance of it the reader will find in the subsequent pages, beginning where "August 9th, 1792," is inserted.

Kemble, ciritically, and very pro-

perly, prepared the minds of the public by this address :—

EDINBURGH THEATRE.

" Mr. Kemble begs leave most respectfully to inform the public, that he hopes to have the honour of soliciting their countenance as a manager of a theatre in this city, during the ensuing winter. He feels himself at present not at liberty to enter into particulars; but when he can do so, he humbly hopes that the opinion of the public will not be different from that of the right honourable and honourable gentlemen who have already examined into his dispute with Mr. Jackson, and who have declared, " That Mr. Kemble, in the whole of the business, has conducted himself liberally, and has shewn the strongest desire to have the business concluded on fair and equitable terms."

If his conduct shall in the same manner be approved by the public, Mr. Kemble will with confidence solicit their protection and support."

In 1793, Mrs. Bennet, the mother of Mrs. Esten, opened the old theatre; and on the 21st, Mr. Kemble opened a new theatre, which he had fitted up at a great expence, under the idea that he had an equal right with Mrs. Esten to perform plays in Edinburgh. This contest involving a great deal of important legal matter *pro* and *con*, I have carefully preserved every document respecting it, and shall here insert them for the information of those who may wish to be thoroughly informed of the matter: the proceedings and the arguments *pro* and *con*, will, I flatter myself, be a valuable and invariable guide for any concerned in a similar situation.

Young lawyers, as well as managers and players, will be instructed by its importance, as it forms a complete, full, and thorough inquiry into the nature of theatrical property, both in ancient and modern times, with many most valuable and interesting observations of the best lawyers now in Scotland, respecting property in that kingdom since the Union; and also a sketch of the nature of theatrical property in different kingdoms. That Mr. Kemble was persuaded Jackson had no right to the patent I am confident, and that fatal credence cost him no less a sum than 2,000l. Previous to Mr. Kemble's opening his new theatre, Mr. Playfair presented before the Lord Ordinary a bill of suspension and interdict; he also executed a summons of declarator, which produced the following informations, petitions, memorials, answers, and minutes.

January 22d, 1793.

PETITION AND COMPLAINT.

Trustee for J. Jackson's Creditors;

AGAINST

CHARLES LEE-LEWES.

PARTY, AGENT.

S. CLK.

Unto the Right Honourable the

LORDS OF COUNCIL AND SESSION,

THE PETITION AND COMPLAINT

OF

ROBERT PLAYFAIR, Trustee on the Sequestrated Estate of JOHN JACKSON, late Manager of the Theatre-Royal, Edinburgh;

Humbly Sheweth,

THAT, by Statute 10 Geo. II. cap. 28. § 1. it is enacted, "That every person who shall for gain act, or represent, or cause to be represented, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, in case such person shall not have any legal settlement in the place where the same

shall be acted, without authority or letters patent from his Majesty, or without licence from the Lord Chamberlain of his Majesty's household, shall be deemed a rogue and a vagabond, within the act 12th Ann, § 2. cap. 23." That by statute 17th Geo. II. cap. 5. § 2, it is enacted, "That if any person having or not having a legal settlement, shall, without such authority or licence, act, or represent, for gain, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, such person shall forfeit 50l.; and in case the said 50l. shall be paid or recovered, such offender shall not for the same offence, suffer any of the penalties inflicted by the said act." That by the said statute it is provided, that "the pecuniary penalties therein inflicted, for offences committed within Scotland, shall be recovered by action or summary complaint before the Courts of Session or Justiciary, or for offences committed in any part of Great Britain, in a summary way, before two of the justices of the peace, by the oath of one witness, or confession of the offender, to be levied by distress and sale of goods; and for want of distress, the offender shall be committed to any house of correction, for any time not exceeding six months; and any person aggrieved by the order

of such justice of peace, may appeal to the next sessions, whose order therein shall be final; and the penalties for any offence against this act, shall belong, one moiety to the informer, the other moiety to the poor of the parish."

That Stephen Kemble, manager of the Theatre Royal at Newcastle, having announced, in the Edinburgh newspapers, his intention to fit up the Circus as a theatre, and act plays therein, the petitioner did, on the 4th of December last, intimate to him, under form of instrument, a copy of which is hereto annexed, that as such an exhibition would be contrary to law, and injurious to the estate under the petitioner's management, informations would be lodged against him for the penalties in the above statutes, if he should attempt to act plays there.

That notwithstanding of the said enactments, and of the said intimation, true it is and of verity, That upon the twenty-first day of January current, Charles Lee-Lewes, comedian, did, without any licence or authority of his Majesty, or the Lord Chamberlain of his Majesty's household, take upon him in the employment of the said Stephen Kemble, to act or perform a part in a play, farce, comedy, or interlude, called the Rivals, viz. the character of Sir Anthony Absolute in said comedy,

or ...e other character in the said play, or some o... entertainment of the stage, and that within t... arish of St. Cuthbert's, and neighbourhood of ...mburgh, in a house called the Circus or new theatre, by which the said Charles Lee-Lewes has incurred the penalties and forfeitures of the said acts, or either of them, as will be proved by the depositions of one or more witnesses, or by the confession of the said Charles Lee-Lewes. And in terms of the provisions of the said statute, of the 17th of his late Majesty, the present summary complaint is offered, in order to recover the penalties contained in the said act. The petitioner has taken the liberty to annex a copy of a conviction on the same statute in England, when a new theatre, called the Royalty Theatre, was attempted to be established in the neighbourhood of London without legal authority.

May it it therefore please your Lordships, to appoint this petition and complaint to be served upon the said Charles Lee-Lewes, and ordain him to make answer thereto, on such short day as to your Lordships shall seem proper, and in his answer to confess or deny the fact of his having acted in such a play, farce, interlude, or other stage-performance, on the day and place above set forth; and in case the same should be denied, to allow

the petitioner a proof thereof by the oath of one or more witnesses: and thereafter, on the same being so admitted, or so proved, to find that the said Charles Lee-Lewes has incurred the penalty of 50l. specified and contained in the said act, and to ordain him to make payment thereof, one moiety to the petitioner, and the other to the poor of the parish of St. Cuthbert's, within which parish the said offence was committed, and to grant warrant for levying the same, by distress and sale of his goods; and failing recovery thereof by such distress, to ordain the said Charles Lee-Lewes to be committed to the common jail of the county of Edinburgh, for such time not exceeding six months, as to your Lordships shall seem just; and farther, to find the said Charles Lee-Lewes liable to the petitioner in the expence of the present application, procedure to be held herein, and expence of extract.

According to justice, &c.

ALLAN MACONCHIE.

Mr. Kemble, Mr. Woods, and nine more of the company, were also informed against.

Here follows my answer.—

January 29, 1793.

Answer—MR. CHARLES LEE-LEWES,

TO

PET. AND COMP.—R. PLAYFAIR.

Answers for Mr. CHARLES LEE-LEWES, Comedian; to the Petition and Complaint of ROBERT PLAYFAIR, Writer, in Edinburgh, designing himself Trustee on the sequestrated Estate of JOHN JACKSON, late Manager of the Theatre Royal, Edinburgh.

WHEN the respondent engaged himself as a performer at the new theatre with Mr. Kemble, he had every reason to believe, that Mr. Kemble was to play under the royal patent, and consequently that he and his company were under the protection of the law.

It was with no little surprize, therefore, that the respondent found himself attacked by the present complaint.

Your Lordships know, that in the year 1788, letters patent in full and ample form were granted

by his Majesty to his grace the Duke of Hamilton, and the right honourable Henry Dundas, and their assigns, for twenty-one years, to build a theatre in Edinburgh, and employ actors or others for theatrical exhibitions, with all the other privileges usually bestowed in such cases.

By the authority of the patentees, and under the protection of the patent, Mr. Kemble employed a company of comedians, who performed in this city during the whole of the last year. The respondent, who was one of Mr. Kemble's company, had no difficulty to renew his engagement this year, being assured that the patentees would again communicate their privilege to Mr. Kemble; and the fact is, has already obtained the consent of Mr. Dundas in proper form, as is well known to your Lordships, in another question presently depending before you, betwixt Mr. Playfair and Mrs. Esten on the one hand, and Mr. Kemble on the other.

In this situation the respondent humbly apprehends, that he has a right to be considered as one of his Majesty's servants: and the complaint is not true, in so far as it charges him with having performed a part in a play, &c. "without any licence or authority of his Majesty, or the Lord Chamberlain of his Majesty's household."

This might be sufficient in answer to the complaint, but in a prosecution of this kind, so evidently invidious, where an informer is claiming high penalties on account of an act, in which it cannot be pretended there was any moral wrong, and which was in all respects done most innocently by the respondent, there are other considerations in aid of the above, which are well intitled to the attention of your Lordships.

The complaint is laid upon two statutes; 1st. the 10th Geo. II. cap. 28, sect. 1st. by which it is enacted, "That every person who shall commit the trespass therein described, shall be deemed a rogue and vagabond, within the act of the 12th of Anne, sess. 2, cap. 23."

But, with regard to this, your Lordships will observe, in the first place, that there is nothing drawn from it in the conclusion of the complaint; for your Lordships are not prayed to find the respondent a rogue and vagabond, within the act of the 12th of Anne.

But, in the second place, the act of 12th of Anne itself is expressly repealed by the 13th of Geo. II. cap. 24, sect. last; so that it is difficult to perceive for what purpose this clause of the 10th of Geo. II. has been introduced into the complaint.

The second act of parliament founded on, is the 17th Geo. II. cap. 5, sect. 2, by which *it is alledged to have been enacted*, "That if any person, having, or not having a legal settlement, shall, without such authority or licence, act or represent, for gain, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, such person shall forfeit 50l.; and in case said 50l. shall be paid or recovered, such offender shall not, for the same offence, suffer any of the penalties inflicted by the said act." And it is alledged *to have been provided by the said statute*, "That the pecuniary penalties therein inflicted for offences committed within Scotland, shall be recovered by action or summary complaint before the courts of Session or Justiciary, or for offences committed in any part of Great Britain in a summary way, before two of the justices of the peace, by the oath of one witness, or confession of the offender, to be levied by distress and sale of goods; and for want of distress, the offender shall be committed to any house of correction, for any time not exceeding six months; and any person aggrieved by the order of such justice of peace, may appeal to the next quarter session, whose orders therein shall be final; and the penalties for any offence against

this act shall belong, one moiety to the informer, the other moiety to the poor of the parish."

Upon seeing this statute narrated in the complaint, it was naturally perused with some attention, *but no such clauses are to be found in it*; and it is amazing what Mr. Playfair can mean by trifling with your lordships in this manner. Upon looking at the statute itself, your lordships will see, that the second section, instead of 50l. penalty now sought, contains an enumeration of different kinds of rogues and vagabonds, such as patent-gatherers, collectors for prisons, gaols, or hospitals, fencers and bear-wards, minstrels, jugglers, gipsies, &c. &c.; and through the whole of the act, there is not one word to be found, in the remotest degree resembling the clauses founded on by Mr. Playfair.

And, hence your lordships will see, that, in Mr. Playfair's own words, "the present summary complaint is offered, in order to recover the penalties contained in the said act," the conclusion for these penalties now demanded is totally unfounded, and the respondent is intitled to treble costs, in terms of the last clause of the act itself.

Annexed to the complaint, there is a protest

taken at the instance of Mr. Playfair against Mr. Kemble, in which the notary is pleased to state, as in the complaint, that the act 7th (it should be 17th) of Geo. II. gives a penalty of 50l. against persons acting plays, &c. without a licence; but it is unnecessary to observe, that a notarial instrument is no evidence of the terms of an act of parliament, more especially when it is disproved by the act itself in the statute book.

There is likewise annexed to the complaint, three papers relative to the commitment of Richard Gaudry for playing without a licence, and the respondent has no occasion to dispute their authenticity. On the contrary, he believes, that the proceedings in that case were fair and regular, and that Mr. Gaudry was properly committed as a rogue or vagabond, within the intent and meaning of the act 17th of the late king. But that was not an action for the penalties; for if it had, it must necessarily have been dismissed with treble costs, for the reasons formerly assigned.

Having already stated two different answers to the complaint, each of which, it is hoped will be considered as separately compleat and satisfactory, it may be thought superfluous to add a third. But the respondent will be allowed to observe, that, independent of other considerations,

the complaint is altogether inept, at Mr. Playfair's instance, in the character in which he is pleased to represent himself. Supposing the clauses, erroneously imagined by him, to be contained in the act 17th Geo. II. were in some other act, and were to be held for law, it is extremely doubtful, how far a summary complaint to your lordships, at the instance of Robert Playfair, as a common informer, could be sustained. With submission, the act bears no such construction. As the respondent understands it, the action should proceed at the instance of a public prosecutor, from whom, upon recovery of the penalties, the informer is intitled to his reward.

But this is of very little consequence; for Mr. Playfair does not appear as a common informer, but in the peculiar capacity of trustee on the sequestered estate of John Jackson; and in the complaint it is insinuated, though not directly said, that the public offence supposed to have been committed by the respondent, would *be injurious to the estate under the petitioner's management*.

Now your lordships will observe, in the first place, that Mr. Playfair has no title to prosecute by himself under the description of trustee upon

the sequestered estate of John Jackson. The fact is, that Mr. John King was elected joint-trustee along with him; and he being much dissatisfied with Mr. Playfair's conduct, resigned his office; upon which Mr. Alexander Nairn, accomptant in Edinburgh, as elected by the creditors, came to be co-trustee in his place, with Mr. Playfair. From which it is obvious, that Mr. Playfair, without the concurrence of Mr. Nairn, cannot carry on any prosecution under the designation he has assumed, and no such concurrence has been specified, nor has it been obtained.

But, in the second place, it is not enough that Mr. Kemble's acting is prejudicial to the estate under sequestration, unless it can be added, the exclusive right conveyed by the patent, is either a part of the sequestrated estate, or the benefit of it has been communicated to the creditors by the patentees. The respondent understands that Mr. Playfair and Mr. Kemble are exactly upon an equal footing in this respect; and if there is a difference, that Mr. Kemble has a better right of the two.

It was under the impression that Mr. Kemble had a good right to perform under the patent, that the respondent engaged with him and made

his appearance on the stage. It would be extremely hard, therefore, if he were to be exposed to the severe penalties which are insisted on by Mr. Playfair. But the respondent is confident that your lordships, upon considering the whole case, will, without hesitation, dismiss the complaint, with expences.

In respect whereof, &c.

JOHN CLERK.

The day after, we of the new theatre were informed against. The following complaint of Kemble's was preferred against the deputy manager of the old theatre.

January 23, 1793.

PET. AND COMPLAINT.

S. KEMBLE AGAINST J. WILLIAMSON.

J. GIBSON, W. S. AGENT.

S. CLERK.

Unto the Right Honourable the

LORDS OF COUNCIL AND SESSION,

The Petition and Complaint of STEPHEN KEMBLE, Manager of the New Theatre of Edinburgh,

Humbly Sheweth,

THAT it is with the utmost reluctance the petitioner now appears before your lordships as an informer. This character he never would have assumed, had not Robert Playfair, writer in Edinburgh, designing himself trustee on the sequestrated estate of John Jackson, late manager of the Theatre-royal, Edinburgh, thought proper to complain to your lordships against the petitioner, and of the comedians employed by him. These petitions being intended to harass and distress

the petitioner and his company, notwithstanding an interdict pronounced by Lord Swinton, ordinary, which was intimated to Mr. Playfair, and at the same time to forward the views of another company of comedians, the petitioner is now laid under the necessity of applying to your lordships in the same manner against James Williamson, comedian, a member of the other company, as having been guilty of the offence alledged to have been committed by the petitioner's performers.

The petitioner has not followed the example of Mr. Playfair, in presenting different complaints against every individual performer who has acted in Mrs. Esten's company. If there is any offence committed, he apprehends, that it does not so much lie with the performers, as with those by whom they are employed. He has, therefore, reserving his right of complaint against every individual of her company, in case he shall be forced to follow out measures against them, selected Mr. Williamson, deputy-manager for Mrs. Esten, and thereby representing her. He wishes, if possible, to avoid giving uneasiness, or being in any degree the cause of anxiety to any of her other performers, and he must again take the liberty of repeating, that nothing but the necessity he is under of defending

himself and his company, could have forced him to take up the odious character he is now obliged to assume.

[Here follows the act, which is the same as quoted in the petition and complaint against myself.]

That notwithstanding of the said enactments, true it is, that the said James Williamson, upon the 12th day of January current, did, without any licence or authority of his Majesty, or the Lord Chamberlain of his majesty's household, take upon him, in the employment of Mrs. Harriet Pye Esten, lessee of a building belonging to the creditors of the said John Jackson, to act or perform a part in a tragedy called Percy, viz. the character of Douglas in the said tragedy; as also, upon the 16th day of the said month, the said James Williamson took upon him, without any licence or authority as aforesaid, to act or perform a part called Iago, in the tragedy of Othello; and also, upon the 19th day of the said month of January current, the said James Williamson took upon him, without any licence or authority, as aforesaid, to act or perform a part called Clifford, in the comedy of the Heiress, or some other characters in the said plays, and that within the said

building belonging to the creditors of the said John Jackson, of which the said Mrs. Harriet Pye Esten is lessee, and which is occupied by her as a theatre, lying within the parish of St. Giles', and sheriffdom of Edinburgh; by all which the said James Williamson has incurred the penalties and forfeitures of the said acts, or either of them, as will be proved by the depositions of one or more witnesses, or by the confession of the said James Williamson; and in terms of the provisions of the said statute of the 17th of his late majesty, the present summary complaint is offered, in order to recover the penalties contained in the said act.

May it therefore please your lordships, to appoint this petition and complaint to be served upon the said James Williamson, and to ordain him to make answers thereto, on such short day as your lordships shall seem proper; and in his answers, to confess or deny the fact of his having acted the parts or characters in the tragedies or comedy before named, on the days and place above set forth; and in case the same shall be denied, to allow the petitioner a proof thereof by the oath of one or more witnesses; and thereafter, on the same being admitted or so proved, to find

that the said James Williamson has incurred the penalty of 50l. specified and contained in the said act, for each of the said performances; and to ordain him to make payment thereof, one moiety to the petitioner, and the other to the poor of the parish of St. Giles, within which parish the said offence was committed, and to grant warrant for levying the same, by distress and sale of goods; and failing recovery thereof by such distress, to ordain the said James Williamson to be committed to the common jail of the county of Edinburgh, for such time, not exceeding six months, as to your lordships shall seem just; and farther, to find the said James Williamson liable to the petitioner, in the expence of the present application, and procedure held herein, and expence of extract.

According to justice, &c.

JOHN CLERK.

January 29, 1793.

MEMORIAL.

Trustee for J. Jackson's Creditors, &c.

PARTY, AGENT.

BILLS.

[LORD SWINTON, REPORTER.]

Memorial for ROBERT PLAYFAIR, writer in Edinburgh, Trustee for the Creditors of JOHN JACKSON, late Manager of the Theatre-Royal, Edinburgh; and for Mrs. HARRIET PYE ESTEN, Lessee of the said Theatre-Royal.

AN advertisement having appeared in some of the Edinburgh papers upon the 17th current, announcing that Mr. Stephen Kemble intended to open a new theatre in the city of Edinburgh, on the 21st day of January, 1793, the memorialists conceived that, as having a right to the patent for the Edinburgh theatre, they had a title to stop Mr. Kemble from performing contrary to law; and therefore presented a bill of suspension and

interdict against him, in order to have him prohibited from opening any new theatre within the city of Edinburgh or its suburbs. At the same time Mr. Playfair, in order to remove any doubts that might be entertained as to his title, arising from a misapprehension of the nature of the right vested in his grace the Duke of Hamilton, and the right honourable Henry Dundas, in whose names the present patent runs, executed a summons of declarator for having the nature of the trust reposed in these nominal patentees declared.

Jan. 19th, 1793.] Lord Swinton, ordinary, on advising the bill of suspension, pronounced the following interlocutor. "The Lord Ordinary having considered the bill, and heard parties procurators, makes avisandum therewith to the lords, and appoints the parties to prepare and lodge memorials on the cause, and to put the same into the lords' boxes betwixt —— and Tuesday the 29th current." In obedience to which this is humbly offered.

General Arrangement.] In order that your lordships may judge of the merits of the question which the Lord Ordinary has taken to report, it is essentially necessary, that an accurate statement of the manner in which the patent was originally granted to the Edinburgh theatre in the year 1767,

and likewise of the proceedings which took place when the patent was renewed in 1788, should be laid before the court; when, from a perusal of such statement, your lordships shall be fully acquainted with the situation in which Mr. Jackson and the memorialists stand, they will then proceed to state the origin of the present dispute, and will conclude with the arguments which they humbly hope will be sufficient to support the reasons of suspension.

Narrative of the proceedings which took place from the time the first patent was granted, till it was renewed in 1788.] Prior to the year 1767, the city of Edinburgh had no licensed theatre, and the representations of the stage were exhibited in different parts of the town, as it suited the convenience of the strollers or adventurers who composed the dramatis personæ. Some time prior to the above period, a theatre had been erected in the Canongate, which, after having passed into the management of various persons, became overloaded with debt; and although several gentlemen of the first character and rank in this country interposed their credit, it still continued to decline, till a transaction was entered into between these gentlemen and Mr. David Ross of Covent-garden,

by which he, on the one hand, agreed to discharge all the debts affecting the concern, which amounted to a very considerable sum, and also to pay certain annuities to the original proprietors of the said theatre; and they, on the other hand, engaged to procure a patent at his expence. They accordingly having applied to the Lord Chamberlain, obtained a patent, which was taken out May 11th, 1769, in the name of Mr. Davidson, their solicitor, and immediately assigned by him to them, of this date; they sold the theatre, scenery, &c. together with the said patent, to Mr. David Ross of Covent-garden, comedian.

Mr. Ross immediately published proposals for erecting a new theatre upon subscriptions, similar to the manner of erecting theatres in England, and the sum of 2500l. was advanced for this purpose by twenty-five gentlemen, in shares of 100l. each, for which each subscriber was to draw 3 per cent. per annum, and was likewise to have the liberty of personal admission to the entertainments; and it was agreed, that the patent, house, scenery, &c. should be mortgaged to them for their security.

In prosecution of the plan, Mr. Ross soon after built and furnished the present theatre-royal, which, besides the subscription-money, cost him

about 4000l. sterling. But this advance being too great for Mr. Ross's funds, he soon became involved in debt, and was obliged to let the theatre to various managers, who, having no interest in the property, used it as they found it, without making the necessary repairs; and consequently the fabric of the house was neglected, and the scenery, wardrobe, &c. entirely worn out.

July 14th, 1785.] In this situation, Mr. Ross, of this date, sold the whole property and patent to Mr. John Jackson, under various conditions; and particularly that he, Mr. Jackson, should engage to pay the debts of the theatre, and find security to Mr. Ross for an annuity of 150l. per annum.

Mr. Jackson, although he knew the patent would expire in three years, immediately gave the house a complete repair, put on a new roof, and furnished it with new scenery, wardrobe, &c.

As the misfortunes attending Mr. Ross and the former managers were in part to be attributed to the shortness of the Edinburgh season of acting, which, joined to the great distance from the capital, made it difficult to engage performers of merit, Mr. Jackson, upon his own credit, built a new theatre at Glasgow, which cost him about

3500l. sterling, hoping, by this means, in a great measure to remedy the defect, and more easily to accommodate the public with eminent performers.

The patent for the Edinburgh theatre, to which Mr. Jackson obtained right in consequence of his purchase from Mr. Ross, expired in September, 1788. Some time prior to that period, a number of gentlemen, probably unacquainted with the want of success, which the gentlemen who interposed their credit, and to the management of the Canongate-house had formerly experienced, formed the plan of getting the patent renewed in their own names; and accordingly, a proposal to that effect was laid before the Lord Chamberlain, in which no notice was taken of the present theatre-royal, of the subscribers to it, or of Mr. Jackson the patentee, as if the interest of these gentlemen, to whom the property of the house belonged, was to be totally overlooked in the renewal of the patent.

From the transaction between Mr. Ross and Mr. Jackson, the circumstances of which have been already related, your lordships will at once see, that Mr. Jackson was at least the *principal* proprietor of the theatre, it having cost him *a sum more than equal to the one subscribed*, and, indeed,

correctly speaking, these gentlemen-subscribers were in fact originally only annuitants, having the house, scenery, &c. pledged to them in security of their annuity, and Mr. Jackson was the *sole proprietor*. This arrangement was, however, so far altered, that Mr. Jackson having renounced the right of redemption of the shares, these gentlemen became absolute proprietors, to the extent of their original subscription.

Against the proposal made by the abovementioned gentlemen, Mr. Jackson gave in a memorial to the Lord Chamberlain, in his own name, and that of the proprietors, explaining the nature of his right, and craving a new patent in his own name; it was therein stated, that it had been the universal practice to renew patents from time to time to the possessors of the property, and that the two London theatres had been lately sold for the enormous sum of *sixty* and *seventy* thousand pounds sterling, and that at a time when the patent of one of these houses was within a few years of expiring; from this the obvious conclusion was drawn, that as the brick walls, scenery, &c. were not worth a sixth part of the above sum, it must have been a very well understood point, that the patents would of course be renewed to the holders

of the property, before any person would have ventured to give so large a sum.

It was likewise mentioned, that the theatres of Bath, Chester, Hull, York, Liverpool, &c. were all upon the same footing as that of Edinburgh, and that the patents had been regularly renewed to the respective proprietors of these theatres.

Upon this subject, it may be necessary to enquire a little into the nature of theatrical property, as the same has been universally understood in modern times.

Sketch of the nature of theatrical property in different countries.] In the ancient republics of Greece and Rome, the public built and furnished those magnificent theatres which have been the admiration of succeeding ages. The public, therefore, had an unquestionable right to the exclusive nomination of every person concerned in the conduct of these national spectacles. In modern Europe, the whole expence attending the erection and support of theatres, has been, with very few exceptions, defrayed out of the fortunes of private individuals, who have therefore been every where permitted to manage and conduct their own property, under regulations consonant to the police of their respective countries.

In the days of Elizabeth, James, and Charles the First, the exhibition was attended with great expence. The scenery and architecture of Ben Jonson's masques were designed by sir Inigo Jones. The actors were the household, and thence derived the title of his *Majesty's servants*.

At the Restoration, sir William Davenant, and sir Harry Killigrew, undertook to build and decorate a house entirely at *their own expence*, for the entertainment of the public as well as the court: therefore it was that Charles the Second granted a patent to them *and their heirs and assigns for ever*. This patent is the authority of Covent-garden at this moment: and since the institution of Drury-lane theatre, the patents, though granted for a term of years only, have uniformly been renewed to the proprietors.

The same respect to theatrical property, obtained even under the ancient arbitrary government of France, (whether it would under the present, the memorialists will not pretend to say.) The theatres of Paris arose from a religious society termed *Confrerie de la passion*. The brotherhood represented sacred subjects, and when these pieces came afterwards to give place to modern comedy, the first religious actors retained, notwithstanding,

the property and licence from the crown. By them the whole was at last conveyed to the company of the *Hotel de Burgogne*, in consideration of a certain annuity or annual rent. Moliere founded the other Parisian company, and the proprietors of the present theatres of Paris are *the lineal successors of these two by succession or purchase, without interruption.*

That the same rule holds in most countries of Europe, the memorialists have been always led to believe; and considering the respect which has been always paid in this and other countries to the situation of those possessing the property, and the uniform practice in England, as already explained, it was natural to expect, that Mr. Jackson's claim to a renewal of the patent in his favour, would preponderate with the equity of government.

Account of what occurred at the time the present patent was granted.] In consequence of these different applications made to the Lord Chamberlain, your lordships will be informed, that it soon came to be acknowledged, upon the nature of Mr. Jackson's right being explained, and likewise the practice of renewing patents to the proprietors of the house, that the set of gentlemen who had made the application, could not reason-

ably maintain it against Mr. Jackson's equitable right; and the only doubt that remained was, whether Mr. Jackson should have the patent in his name alone for the period of twenty-one years, without any controul whatever over him, or whether it would be more prudent for the public interest, that he should enjoy it for a shorter period, and get it renewed from time to time, in order that there might be some check, if he chose (which it certainly was not his interest to do) to neglect his duty as a manager altogether, or to shut up the play-house during the remaining years of the patent. Accordingly, an offer was made, to give Mr. Jackson a new patent for ten years in his own name; but this he did not think it his duty to accept, as he did not wish to introduce any innovation, as to the length of time for which such patents were in use to be granted.

Finding, however, that there was still some opposition to his getting the right to the patent for twenty-one years, without any possibility of controul, and not wishing to quarrel with the public upon this score, he requested of his grace the Duke of Hamilton, and the right honourable Henry Dundas, now one of his majesty's principal secretaries of state, to allow the patent to be held in their joint names in trust. A new pa-

tent was accordingly obtained in their names, conceived in general terms to them and their assigns, to endure for twenty-one years from the 29th day of September, 1788. This patent, which is in the same terms with the former patent, was entered in the Lord Chamberlain's office, and passed the seals upon the 10th of October, 1788.

It is true, that in this patent, no mention is made of Mr. Jackson, nor of the trust which the Duke of Hamilton and Mr. Dundas had undertaken, because the patent was just made out in the ordinary style. The nature, however, of this transaction, is not left to implication or conjecture, but must be clearly understood by your lordships, upon perusing the following deed of consent, executed by Mr. Jackson at the time the different applications were made for the new patent. It was of this date, June 10, 1786, and is in the following terms:—"I, as proprietor of the theatre-royal of the city of Edinburgh, and patentee thereof, hereby consent and agree, that a new patent for the said theatre, may, if it please his majesty, be granted to his grace the Duke of Hamilton and Brandon, and the right honourable Henry Dundas, treasurer of the navy, and to the survivor of them, for the term of twenty-one years, to commence from the 29th of September, which

shall be in the year 1788, at which time the term of subsisting patent expires to the said theatre: the rights of the gentlemen subscribers to the said theatre, being understood to subsist and be continued under the new patent, in terms of the original deed made in their favour at the erection of the said theatre.

(Signed) J. JACKSON.

Signed, sealed, and delivered
in the presence of WALTER ROSS.
(Signed) THOMAS LAW."

Along with this deed, the following letter was transmitted from Mr. Jackson to Mr. John Seton, solicitor:—

"As the shortening the term of the patent for the Edinburgh theatre, appeared to me to be a material injury to the property, therefore, in order to put an end to all disputes upon that head, I proposed that the new patent should be taken out for the usual term of twenty-one years, by his grace the Duke of Hamilton, and the right honourable Henry Dundas, and they have upon my application condescended to hold it.

"I now lodge with you my right to the present patent, with a consent upon my part to the new one. You will please to give in the consent

to the office of the Lord Chamberlain, and get it entered in the books. Take out the new patent as soon as possible, and place the charges to my account, &c."

About the same time the Duke of Hamilton and Mr. Dundas wrote a letter upon the subject, addressed to the Lord Chamberlain, and lodged at his office, in the following terms:—

"In order to put an end to the disputes which have arisen relative to the renewal of the patent for the Edinburgh theatre, we have been requested to apply for the same in our joint names, as trustees for the parties concerned; and therefore request your lordship humbly to move his majesty for a renewal of the said patent in our joint names, for twenty-one years, from and after the expiration of the present term.

(Signed) HAMILTON and BRANDON.
HENRY DUNDAS."

The above letter, which was lodged in the Chamberlain's office by Mr. John Seton, solicitor in London, by whom, if disputed, its authenticity can be proved, as likewise that of the deed of consent, and Mr. Jackson's letter accompanying it, which were lodged in the same office, show very clearly the understanding of the par-

ties; and as the memorialists will have occasion to comment upon them in the sequel, they will now make a single observation upon them, as they have already expressed their intention to give a simple narrative of the various transactions relative to the renewal of the patent, and the origin of the present dispute, uninterrupted by argument.

Under the patent so obtained in the names of the abovementioned gentlemen, Mr. Jackson, who defrayed the whole expence of it, amounting to near 300l. sterling, continued to manage the theatre, till his affairs went into confusion in summer 1790, when his estate, real and personal, was sequestrated, by which his right to the said patent devolved upon his creditors, and to the trustee on the sequestrated estate. During all this period, Mr. Jackson neither asked nor obtained from the nominal patentees any consent to his enjoying the benefit of the patent, but, like any other truster, took possession of, and managed and reaped the profits of his trust-estate. As, however, it was necessary to let the house to some person who understood the business of managing the theatre, the person first named trustee for the creditors let the theatre for one year to Mr. Jackson; and the trustee, then unacquainted

with the nature of the right, made it a condition in the lease, that the sanction of the patentees should be obtained.

As, however, Mr. Jackson, from the embarrassed situation of his circumstances, was not able to fulfil the engagements he came under by that lease, it became necessary that the theatre should be again let by the creditors for one year, to some other person. It was accordingly advertised to be let by public roup, and was taken by Mr. Kemble at the roup, at the rent of 1200l.

Upon this occasion, a doubt seems to have been entertained by Mr. Gibson, then trustee for the creditors, how far he was entitled to let the theatre to any person without the consent of the two right honourable persons in whose name the patent runs; and some correspondence accordingly took place betwixt Mr. Dundas and him, with respect to the nature of that trust. But it will be observed, that at this time, the then trustee, Mr. Gibson, knew nothing of all those various particulars which took place at the renewal of the patent, which have been already laid before your lordships; and though it is likewise true, that Mr. Dundas, upon that occasion, declared, that he considered himself as trustee for the public, and that he would delegate his right or autho-

rity, as patentee, to any person who should be approved of by the Lord Advocate, Lord Provost, and the Dean of Faculty; yet it is hardly to be supposed, that, considering the multiplicity of business passes through his hands, he would recollect precisely all the circumstances which occurred at the time he accepted of being one of the trustees, along with the Duke of Hamilton, about five years before; and the memorialists have little doubt, that if all the circumstances had been fairly before Mr. Dundas, he would have at once seen, that he was trustee for the proprietors of the house, and not for the public, except in so far as it was concerned that there should be some person acting under the patent capable of conducting the management of the theatre, and affording amusement to the public. Upon this occasion, the Duke of Hamilton did not at all interfere.

Origin of the present dispute.] Your lordships will now be informed, that it had been previously agreed betwixt Mr. Jackson and Mr. Kemble, that the abovementioned lease for one year should be a joint concern betwixt them, and that missives passed upon the occasion, wherein it was agreed, that they were to pay each one-half of the rent, and the receipts of the house were to be equally divided betwixt them weekly; and it was

likewise therein agreed, that if any dispute should hereafter arise in relation to the business, it should be referred to the honourable Henry Erskine, dean of the faculty of advocates.

In the conduct of this joint concern, the parties very soon differed, and it is to this unhappy difference that the whole of the present dispute is to be ascribed. In consequence of the clause in the missive, these matters came some time after to be referred to the Dean of Faculty; and that gentleman (the memorialists will admit from the best of motives) pronounced a decret-arbitral, not only deciding upon the differences betwixt the parties, relative to the management of the joint concern for the year, but likewise in all time to come, in the event of either being lessee of the theatre; and even went so far as to fix, in the event of Mr. Jackson's recovering the possession of the theatre, by a settlement with his creditors, or otherwise, that he "should be bound to communicate the same to the joint concern, upon receiving 500l. a-year from Mr. Kemble," or a rent to be fixed by his Grace and Mr. Dundas. This decret-arbitral having appeared to Mr. Jackson to be *ultra vires* of the arbiter, a reduction of it was some time ago brought into court; but no decision has as yet been obtained, although Mr.

Kemble, by first stating only dilatory defences, and since offering to give up the cause, in case Mr. Jackson abandoned his claim against Mr. Kemble for the share of the emoluments he was to receive from him, sufficiently expresses his expectations thereupon; nor would the memorialists have troubled your lordships with saying any thing with respect to this decreet-arbitral, had it not appeared, from the subsequent proceedings, that upon the faith of it Mr. Kemble had founded his pretensions to get the lease of the theatre for the present year at the inadequate rate of 500l.

That this was a very inadequate rent for the theatres of Edinburgh and Glasgow, must appear evident, when it is considered, that the year before, upon being set up at public roup, they let for 1200l.; which rent, it will not be denied, Mr. Kemble was able to pay, and likewise to make considerable profit. Twenty years ago the theatre of Edinburgh alone let for 500 guineas, when it was very much inferior in point of scenery and decorations to what it is at present. Besides, from the very great increase of the city of Edinburgh during that period, the demand for public amusements must have very much risen: so it

cannot fail to appear rather an unconscionable demand upon the part of Mr. Kemble, to insist upon a lease of the theatre upon the same terms that it had let at twenty years ago, and to allow nothing at all for the Glasgow theatre, which had cost Mr. Jackson so much money to erect.

As it alledged upon the part of Mr. Kemble, that after Mr. Playfair, one of the memorialists, was named trustee for Mr. Jackson's creditors, he did every thing in his power to prevent Mr. Kemble from becoming lessee of the theatre for the present year, and so obliged him to set up another theatre in opposition, your lordships' particular attention is requested to what passed at this period. So far from endeavouring to prevent Mr. Kemble from obtaining the lease of the theatre, the memorialist does most pointedly aver, that, in the course of last summer, he did, in a conversation with him, offer him a lease of the theatre for two years at the rent he then paid. But this offer Mr. Kemble thought proper to decline, and did not even then make any offer whatever, for reasons which did not then appear, but which are now sufficiently explained by the prospects which he entertained of being able to get a lease of the theatre at the rent of 500l., or else to obtain a share of the property to himself for ever. And to

show your lordships, that in prosecution of this plan no pains had been spared to prevent competitors for the theatre; and to persuade people that Mr. Kemble was secured in the possession of the property and patent, advertisements were put into the London newspapers (the memorialists leave it to your lordships to guess by whom) holding forth, that the Dean of Faculty had secured the property of the theatre to Mr. Kemble; and that if any body else ventured to act in Edinburgh, they would be committed as vagrants: thus endeavouring to prevent any person from becoming lessee, or actors from engaging with any other person but Mr. Kemble. Your lordships will see a specimen of these advertisements in No. I. and II. of the appendix. Your lordships will farther be informed, that Mr. Gibson, Mr. Kemble's agent, was present when authority to let the theatre was given; and that immediately after, advertisements were put into the newspapers by the trustees, inviting all those who wished to bid for the theatre to come forward speedily; and, surely, Mr. Kemble cannot pretend ignorance after such public intimation.

The decreet-arbitral having been soon afterwards pronounced, by which Mr. Kemble was

intitled to be joint lessee along with Mr. Jackson in all time to come; or if this was declined, to demand a lease of the theatre at the rent of 500l. Mr. Kemble's man of business, the very day after it was signed, wrote a letter to Mr. King, one of the trustees on Mr. Jackson's estate, in which an offer of the same rent is made, at which Mr. Kemble, by the decreet-arbitral, was intitled to demand a lease of Mr. Jackson, in the event of his regaining the possession. This letter your lordships will see in No. III. of the appendix. In the first place, it will be observed, that supposing the decreet-arbitral, upon which the offer is clearly founded, had been liable to no legal objections, the trustees for Mr. Jackson's creditors considered themselves as by no means tied down by any decision in a private dispute betwixt Mr. Jackson and Mr. Kemble, and therefore they thought it their duty to reject Mr. Kemble's offer, which, at any rate, came too late, as they had agreed before that, to let the theatre to Mrs. Esten for 1000l. just double the sum offered by Mr. Kemble. This was done in a letter written by Mr. Playfair to Mr. Kemble's man of business, which is No. IV. of the appendix, where your lordships will see sufficient reasons for refusing Mr. Kemble's offer, even supposing it not come too late;

and surely he can have no reason to complain, as he had the first offer of the theatre, and was repeatedly told, that if he did not come forward, it would be disposed of by private bargain, which it accordingly was to Mrs. Esten by the memorialist, in consequence of authority given by the creditors, at a general meeting, held upon the 21st of July last, when the trustees were authorised to let the theatres of Edinburgh and Glasgow, either by public roup or private bargain, as they should judge necessary; and at this meeting Mr. Kemble's agent was present: and the lease, by private bargain, was advertised in all the Edinburgh and some of the London newspapers. Besides, a report of the conduct of the trustees was afterwards communicated to the creditors, at a meeting called for that purpose on the 3d of September last, when the same was approved of, notwithstanding the objections stated on the part of Mr. Kemble's agent. Indeed, it is impossible to suppose that the creditors, unless they were blind to their own interest, should have disapproved of the trustees taking 1000l. of rent, instead of 500l.; nor would they have been justifiable in acting otherwise than they did. So that the whole transaction, upon the part of the trustees, seems to

be perfectly regular and fair towards Mr. Kemble.

Mr. Kemble, however, finding that he had, from his own desire of getting too good a bargain, missed the opportunity of becoming lessee of the theatre; and that any claim which he might have under the decreet-arbitral was not likely to avail him much, being probably advised that it would be reduced; and at all events, knowing that it could not operate while the creditors held the right of letting the theatre, betook himself to the plan of erecting another theatre, in opposition to the one so long established by letters-patent; in prosecution of which plan, he set about fitting up the building formerly occupied as a circus. How far the conduct of this gentleman, when disappointed of his plans of getting the lease of the theatre-royal at an under value, in thus setting up another house in opposition, has been laudable, or how far he is intitled to the public favour, for having thus, from such motives, endeavoured to ruin those interested in the property of the old-established theatre, is left for your lordships to decide. The memorialists may at least safely maintain, that when his conduct is fairly considered, he will not be intitled to any plea of favour; nor has he the least shadow of foundation for urging

the hardship of his situation, in being attacked after being at great expence in fitting up the house, and in bringing actors, when your lordships are informed, that he was all along given to understand, that the proprietors of the old theatre would certainly take every step in their power to prevent his performing; and that a formal protest, which your lordships will see annexed to some of the petitions and complaints presented by the memorialist, Mr. Playfair, was taken so far back as the 4th December last.

On the other hand, Mrs. Esten took a lease of the theatre fairly from the trustees for Mr. Jackson's creditors; and your lordships will attend to the circumstances in which this lease was taken. Before drawing out the lease, a formal agreement was entered into betwixt Mrs. Esten, Mrs. Bennet, her mother, and the trustee for the creditors, and signed by the parties upon the 10th of August, 1792; the fourth article of which runs as follows:—"That the consent of the most noble Duke of Hamilton, and the right honourable Henry Dundas, who hold the patent of the Edinburgh theatre in trust, be obtained to this agreement and proposed lease; and that unless the same can be obtained, or permission procured to the

lessee to act under the patent, during the term of the lease, in that case neither party to remain bound by this agreement; otherwise the same to remain in full force."

From this clause your lordships will perceive, that the bargain was originally conditional; and had not Mrs. Esten been satisfied, from what afterwards passed, that she was to enjoy all the right to the patent which the honourable persons in whose names it was granted had to bestow, she most undoubtedly would never have implemented the bargain. In order, therefore, to show your lordships the foundation upon which she built her hopes of enjoying the benefit of any right which they might have in the patent, it will be necessary to lay before the court an account of the correspondence which took place upon this subject.

Your lordships have been already informed, that Mr. Kemble had by this time formed the intention of setting up a house in opposition to the theatre-royal, and knowing that it would be illegal for him so to do, if the right to the patent was good and effectual to those who had taken a lease of the said theatre, he immediately set to work, by every means in his power, to get the interest of the nominal patentees, in order to rear up an objection

to the right of the memorialists. He accordingly applied to both of them; and though he did not prove successful in his application to the Duke of Hamilton, Mr. Dundas signified that he would not decide till he heard fully what was to be said on either side. As the duke, however, had all along signified his approbation of Mrs. Esten's being lessee, she had only to be satisfied how Mr. Dundas was to act, in order to determine on her own conduct; and as, instead of hearing parties, Mr. Dundas afterwards chose to declare to her his determination not to interfere, she immediately determined to proceed to the business, being advised, as the law stood, it was impossible in such circumstances, that any person could be permitted to encroach on her exclusive right of representing theatrical performances in Edinburgh. And that your lordships may not rest upon the bare assertion of the memorialists with regard to this matter, they will bring forward such letters as they have preserved relative to the present question. In the month of September last, a state of the case on the part of the memorialists was transmitted to Mr. Dundas, in which the consent of the Duke of Hamilton was mentioned; and soon after Mrs. Esten wrote a letter, the copy of which [illegible], it is not in the memorialists power

to lay before your lordships; but the import of it was, to request that he would hear both sides of the question, and that then she should abide by the result of his determination, without asking any favour. That this is the import of it will sufficiently appear from the following answer:—

"MADAM, *Wimbledon, Sept.* 25, 1792.

"I received your letter of the 10th, which I feel I have been too long of answering. If my name has been used to terrify you, it has been used to a very improper, and, I am sure, to a very unauthorised purpose. I have had different representations and statements transmitted to me on the subject of your letter, not one of which I have read, meaning exactly what you request of me, which is, to postpone, till I go to Scotland, any consideration on the subject, because there I can have leisure to hear both sides of the question. When I agreed to allow my name to be put in the patent, it was to prevent a great deal of heat on the subject of the Edinburgh theatre, which was then a matter of much agitation. I have never considered myself in any other light but as a trustee for the public, in one of its best and most rational entertainments.

I am, Madam, your most obedient servant,

(Signed) HENRY DUNDAS."

In consequence of the above letter, Mrs. Esten expected that Mr. Dundas would hear parties as soon as he came to Scotland, and settle the matter; and applications were made on the part of the memorialists for that purpose. No meeting, however, took place; but Mr. Dundas signified verbally, that "he was not to interfere at all" in the matter. Mrs. Bennet, Mrs. Esten's mother, still anxious there might be no mistake, waited upon Mr. Hepburn, his private secretary, and informed him, that although Mrs. Esten, in consequence of Mr. Dundas's intimated resolution to hear both parties, in which event she had little doubt that the justice of her cause would prevail, had already been at considerable expence in preparing the house, &c. yet, that if he inclined to give Mr. Kemble his right under the patent, that she, rather than be the occasion of further contention, would resign her claim. Mr. Hepburn having communicated the import of this conversation to Mr. Dundas, at his desire wrote the following letter to Mrs. Bennet:—

"MADAM,

"Mr. Dundas desires me to acquaint you, in answer to the message I delivered to him from you, that it is not his intention at all to inter-

fere in the dispute between Mrs. Esten and Mr. Kemble.

I am, Madam, your most obedient servant,
(Signed) ROB. HEPBURN."

Melville Castle, Nov. 22, 1792.

In consequence of the above letter, which Mrs. Esten most certainly considered (whether erroneously or not is left to your lordships to decide) as an unconditional declaration of Mr. Dundas's decided determination not to interfere, but to leave Mrs. Esten, with the Duke's consent, and his own declinature to interpose, to make the best she could of her right, she proceeded to implement the agreement, by getting the lease extended; and your lordships particular attention is requested to the following clause inserted in the lease, as affording complete evidence of her view of the matter. After stating the purport of the additional article of agreement formerly taken notice of, it proceeds as follows: "And whereas the express consent of the Duke of Hamilton has accordingly been signified in writing to Mrs. Esten; and Mr. Dundas has signified, by a letter from his secretary to Mrs. Bennet, that he was not to interfere, whereupon both parties agreed to wave the said provision, and hold the agreement binding, being

satisfied that these intimations were fully sufficient to save the parties contractors from all disquiet from the patentees in the accomplishment of the transaction; and the said Mrs. Harriet Pye Esten has accordingly renounced all exception to the validity of the agreement, and taken possession of the Edinburgh theatre in pursuance thereof." She proceeded to repair and fit up the theatre at a very considerable expence, and to engage actors, whom, happen what will, she is under contract to support for the rest of the season.

If it is asked upon what grounds she proceeded in supposing she had the Duke of Hamilton's consent, she has only to answer, that though she has no letter to produce, except the one written by his Grace since the present law-suit was commenced, yet she had repeated assurances of his approbation from the first time the transaction was intimated to him, and actually received a letter to that purpose, which has unfortunately been mislaid. The following letter, however, to Mrs. Bennet, is sufficient of itself to show the duke's consent:

London, January 21, 1793.

"I have consented to Mrs. Esten's acting under the patent for the Edinburgh theatre, in con-

sequence of the lease she has obtained from Mr. Jackson's trustees.

(Signed) HAMILTON and BRANDON."

With such assurances of support upon the one hand, and non-interference on the other, your lordships will consider, whether Mrs. Esten had grounds for thinking that she was to have benefit of the patent, and whether she was in *bona fide* to engage actors, upon the faith that she had a right under the patent to prevent all others from acting, or being concerned in stage performances in Edinburgh, without a patent or licence from his majesty; and she will presently enquire, whether any thing has occurred since, which has altered the nature of her right to put the law against unlicensed theatres in execution. If there has, she must only regret that these circumstances did not occur sooner; for, had she been informed that she was not to enjoy the exclusive privilege of performing stage representations, she certainly would never have sent a company to this city.

Having thus laid before your lordships an account of the nature of Mr. Jackson's right, of the situation of the memorialists, of the proceedings which took place when the patent was renewed in 1788, and of the circumstances which gave

rise to the present dispute, the memorialists will now call your lordships attention to the objections which were stated to Mrs. Esten's right under the present patent, and likewise to the validity of the patent itself, in a counter bill of suspension brought forward by Mr. Kemble's counsel, when called before the Lord Ordinary, to state their arguments against the reasons of suspension contained in the memorialists bill. The memorialists, however, will first say a few words in answer to two separate objections stated in the said bill.

Answer to the objection made to the powers of the memorialist, Mr. Playfair, as one of two trustees.]—It was alledged, first, that the memorialist, Mr. Playfair's powers, to act as trustee, were not sufficient; Mr. King, who was joint trustee along with him, having resigned, and Mr. Nairn being intitled to act as substitute. The plain answer to this is, that Mr. Nairn has not yet accepted, so the existing trustee must act, and a decided approbation of his conduct by the committee of creditors appointed to superintend and direct the management is lodged in process. Your lordships are likewise referred to the minutes of a meeting of the creditors, held so late as the 28th instant, hereto annexed, No. V. of the appendix.

Answer to the argument that Mrs. Esten being vestita viro, *her husband ought to have concurred.*] It is objected, in the second place, that Mrs. Esten has a husband who does not concur. It is true, she has a husband, but he is no party to the lease of the theatre; besides, they are separated by regular deeds, by which the husband renounces his authority; and if there were any difficulty, she might have a curator *ad litem* appointed; or her mother, Mrs. Bennet, who is joined with her in the lease, could authorise the action. But to leave such frivolous objections, the memorialists will proceed to consider the acts of parliament, which they apprehend ought to be put in execution against Mr. Kemble and his company.

Acts of parliament founded upon by the memorialists.] The first act which the memorialists found upon is the 10th of Geo. II. chap. 28. sect. 1, wherein it is enacted, "That every person who shall, for gain, act or represent, or cause to be represented, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, if such person shall not have any legal settlement in the place where the same shall be acted, without authority of letters-patent from his majesty, or without licence from the Lord Chamberlain of his majesty's

household, shall be deemed a rogue and a vagabond, within the act 12th Anne, sect. 2, chap. 23."

That, by the statute 17th Geo. II. chap. 5, sect. 2, it is enacted, "That if any person having or not having a legal settlement, shall, without such authority or licence, act or represent, for gain, any interlude, &c. such person shall forfeit 50l.; and in case the said 50l. shall be paid or recovered, such offender shall not, for the same offence, suffer any of the penalties inflicted by the said act." The same statute, sect. 5, provides, "That no person shall be authorised by any letters-patent, or otherwise, by licence of the Lord Chamberlain, to act or represent any interlude, &c. in any part of Great Britain, except in the city of Westminster, and in such places where his majesty shall in person reside, during such residence only."

The statute 7th of Geo. III. chap. 27, for extending the royalty of the city of Edinburgh, enacts, "That so much of an act of parliament, which passed in the 10th year of his late majesty's reign, intitled, An act for reducing the laws relating to rogues, vagabonds, and sturdy beggars, and vagrants, into one act of parliament, and for

the more effectual punishing such rogues, vagabonds, and sturdy beggars, and vagrants, and sending whither they ought to be sent, as relates to common players of interludes, whereby all persons are discharged to represent any entertainment of the stage whatever, in virtue of letters-patent from his majesty, or by licence of the Lord Chamberlain of his majesty's household for the time being, except within the liberties of Westminster, or where his majesty is residing for the time being, be, and the same is hereby repealed, so far as the same respects of the city of Edinburgh; and that it shall and may be lawful to his majesty, and his heirs and successors, to grant letters-patent for establishing a theatre or playhouse in the city of Edinburgh, or suburbs thereof, which shall be intitled to all the privileges, and subjected to all the regulations, to which any theatre or playhouse in Great Britain is intitled and subjected."

Besides the abovementioned acts, there is likewise one passed in the reign of his present majesty, which gives power to the justices of peace, in certain circumstances, to license stage representations, provided it be not attempted within twenty miles of the cities of Westminster or Edinburgh, or eight miles of any regular theatre au-

thorised by letters-patent from his majesty. But as the present attempt is made in the close neighbourhood of the town, it is needless to say any thing more with regard to the above act, as it cannot at all apply to the present case.

From the first quoted act, viz. 10th Geo. II. it is clear that all those performing, or causing to be performed, any play, opera, &c. without authority of letters-patent from his majesty, or a licence from the Lord Chamberlain, shall be deemed rogues and vagabonds, and liable to all the penalties appointed by act the 12th of Queen Ann, which are very severe, and such as Mr. Kemble's company will not easily submit to. As a specimen of which, the following clause of the act is inserted:—"That any person, apprehended as a rogue or vagabond, may, if the justice or justices think proper, be ordered to be stripped naked from the middle, and openly whipped, until his or her body be bloody, or may be sent to the house of correction, there to be kept at hard labour; or to the common gaol of the said county, therein to remain until the next quarter session to be holden for the said county." This clause, the memorialists are free to confess, would be rather severe in its operation, especially if applied to the

female part of Mr. Kemble's company. It is from tenderness, therefore, to them, that the memorialists, instead of wishing to put such a clause in execution, apply to your lordships for an interdict to stop proceedings which may subject them to such pains and penalties.

Yet certain it is, that Mr. Kemble's company, by his own admission, have been acting without any licence from the Chamberlain, or patent from his Majesty, and therefore must be liable in the pains and penalties in the said act; unless the defence, that the memorialists have no right to insist for putting the above laws in execution against them, having no exclusive right themselves of acting under a legal patent, be well founded.

The memorialists will therefore, after considering the objections which have been made to their title, to insist upon putting the laws against actors in unlicensed playhouses into execution, proceed to state the arguments which they found upon the nature of their right to the patent.

The objections which have been stated to the right of the memorialists, to put the laws in execution against unlicensed theatres, seem to result into the two following:

1st. That supposing they had the full and complete right to the patent, it is not a valid and

effectual patent, being liable to the objection of not having passed the seal appointed at the time of the union, to stand in place of the former great seal of Scotland.

2d. That even upon the supposition of the patent's being valid and effectual, the memorialists have not the right to that patent, having only the consent of one of the right honourable persons, in whose names the patent runs.

With respect to the first of these objections, the memorialists shall not detain your lordships long. The present patent passed the great seal of Great Britain, exactly in the same way as the former patent did, and was entered in the Lord Chamberlain's office in the same manner. Under the authority of these patents, the original patentees enjoyed the exclusive privileges thereby conferred, without interruption, during the period of the first patent. Mr. Jackson, and even Mr. Kemble himself, for one year after Jackson's affairs went into confusion, possessed the same exclusive privileges of performing plays in Edinburgh, under the present patent, without challenge or interruption; and if it ought to have passed any seal in Scotland, it is at least somewhat extraordinary that this never occurred to

any of the gentlemen concerned in taking out the original patent, or in getting it renewed, some of whom, at least, will not be alleged to be deficient in legal knowledge, and far less in that sort of official information requisite in matters of this kind; and it is likewise somewhat extraordinary, that although the former patent was exactly in the same situation, and subsisted for twenty-one years, no person ever thought of challenging the validity of it, or of setting up a house in opposition. The memorialists do understand, that it is not necessary for every commission of offices in Scotland to pass the seals here; and they know for certain that the commissions for justices of peace for Scotland, and others that might be mentioned, have been in use to pass the great seal of Great Britain only. Nor do they know any better rule in matters of this kind, than universal practice; and so far as practice goes, patents for playhouses in Scotland have never passed any other seals. And as it is only all rights of private nature relative to Scotland, which formerly passed the seal of Scotland, that are ordered by the treaty of union to pass the seal thereby appointed, it may be doubted whether a patent for a playhouse in which the public amusement is so much concerned, is precisely a right of that nature.

The present patent is the creature of a British statute, and not a grant formerly in use in Scotland. Be this, however, as it will, it is certainly a most ungracious plea for any person to maintain, that in consequence of an omission of this kind in point of form, a patent, which it cannot be denied was intended to be valid and effectual, and upon the faith of which the proprietors of the Edinburgh theatre have expended large sums of money, should now be in this indirect manner set aside as a piece of waste paper, and the property of individuals embarked upon the faith of it rendered useless. It is hoped your lordships will not listen to an argument so totally inconsistent with every principle of equity and justice, and will therefore over-rule this objection to the validity of the patent: an objection, which, if it was well founded, must upon every principle of equity be still remedied; and to remedy which, the memorialists do most sincerely believe, from the well-known character of the gentlemen in whose names the patent runs, they would not hesitate to give their support. At all events, a right which has subsisted in full force for twenty-five years cannot be overturned by way of exception; it must be held good, till set aside by a regular ac-

tion, and the memorialists submit, that in this shape of the question, they are intitled to a possessory judgment.

Second objection that the memorialists have no right to the patent supposing it valid. If, however, this objection to the validity of the patent were well founded, the memorialists do conceive, that Mr. Kemble's conduct in acting under it last year, and in applying to Mr. Dundas to communicate his right under the patent to him, in consequence of which a letter from that right honourable gentleman upon the subject, to be afterwards mentioned, has been lately received, should be sufficient to bar Mr. Kemble from making any objections upon the validity of that right upon which he is now to found.

The memorialists will now proceed to consider the second objection to their title, viz. That supposing the patent valid and effectual, they have no legal right to it, having only obtained a communication of the right in the Duke of Hamilton, and not that in Mr. Dundas.

From the history of the transactions which took place relative to the communication of the right under the patent as already given, the memorialists must again repeat that they did consider the direct communication of the right by one of

the patentees, and the intimated intention of non-interference on the part of the other, as sufficient to secure to them the enjoyment of the exclusive right under the patent. The matter, however, may perhaps be said to be in some respects altered, though in the memorialists' apprehension, not very materially, by the following letter from Mr. Dundas, to the Lord Advocate of Scotland, communicated to the memorialists since the first part of this paper was drawn.

Wimbledon, January 22, 1793.

My Lord,

I had determined to take no part in the present disputes about the Edinburgh theatre, and it is still my wish not to do it; but if any advantage is taken of any supposed consent given by the Duke of Hamilton, I authorise your lordship, the lord provost, and the dean of faculty, to act in my name, as you think most expedient for the general satisfaction and amusement of the town of Edinburgh, and whatever you do I shall approve of.

And am, &c.

(Signed) HENRY DUNDAS.

Your lordships' particular attention is request-

ed to the terms of the above letter, as upon it the memorialists understand Mr. Kemble is to found a right to the patent, equal to any which the memorialists can boast of. In the first place, it will be observed, that the letter proceeds upon the idea only of a supposed consent given by the Duke of Hamilton; whereas, your lordships have a direct and explicit consent in his grace's letter to Mrs. Bennet, already inserted. In the second place, no communication of any right in Mr. Dundas to the patent is thereby given to Mr. Kemble; all that is given, is an authority to three gentlemen therein named, to act as they shall think most expedient for the general satisfaction and amusement of the town of Edinburgh. Nor can the memorialists believe that these gentlemen will take it upon them to take so strong a measure as to communicate Mr. Dundas's right under the patent to Mr. Kemble, when they take into consideration the various circumstances which occurred, and the correspondence that passed betwixt Mr. Dundas and Mrs. Esten, and her mother Mrs. Bennet. Certain they are, from the very high character and situation of that honourable gentleman, that if all that had formerly passed upon the subject, had been fully and fairly laid before him, together with what Mrs.

Esten did in reliance of his declaration of non-interference, he would have never granted such authority as that given in the above letter. If he had been reminded, that in his letter of the 25th of September last, he had promised to hear both sides of the question when he came to Scotland, as before recited; and that after coming to Scotland, he did not find it convenient for him, from the multiplicity of business in which he was engaged, to enter into the discussion, surely he would not have given his right under the patent to Mr. Kemble, and far less would he have done it upon hearing one party without the other. Still more had he been reminded of the conversation which Mr. Hepburn held with him upon the subject, in consequence of which the letter dated from Melville Castle, declaring his intention not at all to interfere, was written, would he have declined giving such authority to any set of gentlemen, however respectable, as that given in the above letter; for he would at once have seen, that these gentlemen, probably not knowing all the circumstances which had occurred, and being ignorant of the precise situation in which he stood, might make use of the authority so given them, to communicate to Mr. Kemble any right which Mr. Dundas might have under the patent;

they therefore cannot help most sincerely regretting, that all the circumstances taken notice of in this paper, were not submitted to Mr. Dundas before the abovementioned letter was written, being fully convinced that if this had been the case, no such letter would have ever appeared, and when these circumstances are fully before the gentlemen to whom the above authority is delegated, the memorialists, with great deference to their superior judgment, will take the liberty of saying, they will not think themselves authorised to make any such use of it; nor do they believe Mr. Dundas would thank them if they were to do so, as it would be in effect making him interfere most completely in the business, which before leaving Scotland, he gave every reason to believe he was not to do; and before doing which, they will be pardoned for saying, he was in justice bound to have heard what they had to say for themselves. And indeed had Mr. Dundas intended a communication of his right under the patent to be given to Mr. Kemble, he would have written a very different letter from that which has been above inserted, which is certainly very far from indicating any intention to enforce an equality of rights betwixt Mr. Kemble and Mrs. Esten, or leaving her any room to suppose

that his non-interference was conditional, on her not availing herself of the Duke's consent to maintain her exclusive enjoyment of the patent.

In another view of this case the memorialists must be allowed to doubt, how far one of the patentees was intitled to give such right to Mr. Kemble, after Mrs. Esten had, upon the faith of the consent of the one given some time ago, and of the non-interference of the other, actually hired comedians, and began to act under the authority of the patent; nor can they conceive that an *ex post facto* consent of this kind given by one of the patentees, when matters were no longer entire, can be at any rate equivalent to one given long before by the other.

If the above letter is laid out of the question, the memorialists believe it will not be disputed, that they had a good and effectual right to the benefit of the patent; nor can they conceive, that when the nature of that letter, and the circumstances attending it, are sufficiently explained, that any use that shall be made of it can, in any respect, diminish their prior existing right to the benefit of the patent.

The memorialits must now call your lordships' attention to a plea of much consequence to Mr. Jackson's creditors, and the proprietors of the

theatre; it is an argument which they are to found upon the nature of the right to the patent in Mr. Jackson and the proprietors of the house, and, of consequence, in Mrs. Esten, as deriving right from Mr. Jackson's creditors. They mean to maintain that Mr. Jackson and the proprietors of the house have the only real and substantial patrimonial right to the patent, the Duke of Hamilton and Mr. Dundas being in fact only trustees for them; and that whatever right of controul they may have over Mr. Jackson, in so far as the public is concerned, they have no powers (supposing they were both agreed) to give the patent to any other person except Mr. Jackson, or those deriving right from him.

In supporting this proposition, which the memorialists conceive to be the leading one in the present cause, they must again call your lordships' attention shortly to those circumstances which took place at the time the patent was renewed in 1788, and which have been already fully recited in the former part of this paper. It was there shewn, the universal practice in England, was to renew patents to the possessors of the property; and that this, joined to the equity of the thing, weighed much with those who had the renewal of the Edinburgh patent, and that, accordingly, al-

though great interest was made by a number of gentlemen of high rank and respectability of this city, to get the patent renewed in their names, with full powers to manage the theatre; yet, when the nature of Mr. Jackson's right, and the great sums which he had paid for the house and property so short time before the expiry of the former patent, were properly explained, the equitable nature of his claim soon got the better (as it is hoped, always will be the case with those at the head of affairs in this country) of the attempts made by the abovementioned set of gentlemen, to deprive him of the management of that concern in which he had embarked his all. But as there was some heat upon the subject, and as it might have been the cause of offending these gentlemen, (which of all things Mr. Jackson wished to avoid,) he agreed to the names of the Duke of Hamilton and Mr. Dundas being used, in order to prevent any clamour about the matter; but certainly, never dreaming that they should have it in their power to communicate the benefit of the patent to any other person but himself. Accordingly, with that understanding, the whole expences attending the new patent, which are very considerable, were paid by Mr. Jackson, which he certainly never would have been so sim-

ple as to have done, had he had the smallest idea that it was in the power of these gentlemen to employ him not, as they pleased in the management of his own property, and consequently that he might perhaps never draw a shilling under the new patent. He therefore considered them as only trustees for him, which is indeed sufficiently apparent from the words of the deed of consent, which your lordships will see at page 6 of this paper, and which runs as follows: "I, as proprietor of the Theatre Royal of the city of Edinburgh, and patentee thereof, hereby consent and agree, that a new patent for the said theatre, may, if it please his majesty, be granted to his grace the Duke of Hamilton, and the right honourable Henry Dundas,' and it afterwards reserves the right of the proprietors under the present patent, in the same manner as had been done under the former; but unquestionably their right under the former was absolute.

From these words it is clear that the patent was given in the names of these honourable persons, in consequence of the consent of Mr. Jackson, who certainly would never have given such consent, if he had thought that he himself was not to have the benefit of the patent. And your lordships see by the letter from Mr. Jackson ac-

companying the deed of consent, which is at page of this paper, that the proposal had in fact been made by Mr. Jackson himself, and that it was upon an application from him that these honourable gentlemen agreed to hold the patent as trustees. Nor is the manner in which they agreed to hold the trust left to Mr. Jackson's construction of the matter alone; for, from the terms of their letter addressed to the Lord Chamberlain, it is proved in the first place, that they had been requested to allow the patent to be taken out in their names, and that they understood that they were to hold it as trustees for the parties concerned. The words of the letter are, "In order to put an end to the disputes which have arisen relative to the renewal of the patent for the Edinburgh theatre, we have been requested to apply for the same in our joint names as trustees for the parties concerned." Who then were the parties concerned? Was it the gentlemen who had made the application to get the patent in their name? Surely not; for it was Mr. Jackson, and not they, who requested the Duke of Hamilton and Mr. Dundas to interfere; and the very failure of their application to government clearly shews that they were consider-

ed as having no interest in the matter, and from that moment they were on the same footing with any other set of gentlemen in the city of Edinburgh.

By "the parties concerned," therefore, must be understood Mr. Jackson, and the other proprietors of the house. But it will be said, that one of the parties most materially concerned, was the public; and it will be maintained that the trustees were of no use at all, unless they could interfere whenever the public interest required it. In answer to this, the memorialists have no hesitation in declaring, that though, in their humble apprehension, the terms of the letter do not, by any means, authorise any such conclusion; and therefore, that though, in strict law, they might be intitled to maintain that the trustees were merely trustees for Mr. Jackson and the proprietors only; yet they will fairly own that they believe it may have been the understanding of parties at the time, that these nominal patentees should have a certain controul over Mr. Jackson in the management, in so far as the public interest required their interference; but that their right went any further than such power of controul, they most positively deny. And the admitting such power of controul is a sufficient answer to

the argument, founded upon the supposed absurdity of these two honourable gentlemen being merely trustees upon Mr. Jackson's private estate: that they, as trustees for Mr. Jackson, should have it in their power to give away the patent to others, and thus to render that property, over which they were trustees, useless, is a proposition to which the memorialists can never agree; a proposition which they are determined to oppose to the utmost. And if it is asked in what cases this power of controul belonging to these trustees is to be exercised, the memorialists can figure many in which the exercise of this right might be allowed. If, for instance, Mr. Jackson should chuse to shut up his house altogether, or instead of having players suitable to the city of Edinburgh, should chuse to represent puppet-shows in the Theatre Royal, and, under the authority of the patent, prevent any other person from representing entertainments of a more rational kind, in any of these cases, the trustees might, with justice, say, Although we cannot take the patent from you, yet we can oblige you to open your house, and therein to represent, not puppet-shows, but rational dramatic pieces, calculated to entertain and instruct

the public. If, then, the trustees could exercise such controul, so that the public interest was not to suffer, what more has the public to do with the matter? What business has the public to inquire, whether Mr. Jackson, or Mr. Kemble, or Mrs. Esten, are the managers of the theatre, provided the theatre is open, and there is a suitable set of players in it? To take the case which has really happened, the trustee for Mr. Jackson's creditors lets the theatre to Mrs. Esten, a person who, it will be admitted on all hands, is well acquainted with theatrical matters, and well calculated, both from her talents as an actress, and her respectability of character, to give satisfaction to the public in the discharge of her duty, as manager of the theatre. As, therefore, it cannot be alleged, even by Mr. Kemble, that Mrs. Esten is an unfit person to be manager, it is submitted the public can have no interest to complain, and of consequence that the two trustees cannot interfere, as there is no room for the exercise of that controul which the memorialists admit belong to them.

If the trustee for Mr. Jackson's creditors, instead of letting the theatre to some person qualified for the office of manager, had chosen to take the management of it upon himself, an office for

which he must acknowledge his utter inability, and by which means the public in all probability would have suffered materially, in such a case the trustees under the patent might have said, Though you, sir, may be a very good writer, yet as you understand nothing of the management of a theatre, and the public has reason to complain that they are disappointed in their favourite amusement, from your incapacity to manage the business, we do insist, that you will let the theatre to some person capable to manage such a concern—and thus have properly exercised the power of controul vested in them. Nothing of this kind has however occurred, and therefore there was no room even for this sort of controul. And if even in the case of any glaring abuses being committed by Mr. Jackson, all that the trustees could legally do, was to correct that abuse if the public interest was thereby hurt, but could not take away the benefit of the patent; far less can one of those trustees by his authority, diminish the right which Mr. Jackson has to the patent, founded upon just and equitable principles, recognized at the time it was renewed in 1788, and never disputed till within these few months. Indeed had an attempt been made not to deprive

Mr. Jackson of the benefit of the patent, but only to exercise that sort of controul which the memorialists have already admitted to be in the trustees, it seems pretty clear, that one of these gentlemen without the consent of the other, could not have exercised such right of controul; and as from the nature of Mr. Jackson's right to the patent, as already explained, it is, with submission, beyond the powers of the trustees to deprive him of the benefit of the patent, though they were both agreed, so far less can the authority of one of the two trustees be of any avail in depriving him of such right, or have the effect to license two houses in place of one.

If the memorialists have been successful in shewing that it is beyond the power of the trustees to take away the patent from Mr. Jackson, or Mrs. Esten, as in his right, it is of little consequence what use may be made of the letter lately obtained from Mr. Dundas; for whether the patent be a good one or not, the memorialists have a good and an effectual right to it; and till such time as it is proved to be otherwise, and set aside, do consider themselves as intitled, as acting under it, to insist that the statutes already mentioned shall be put in execution against unlicensed theatres.

And, were this patent liable to greater exceptions than it is, the memorialists submit, that when your lordships consider the length of time, during which Mr. Jackson and his authors have enjoyed the exclusive privilege of performing the representations of the stage, under the authority of the former patent, drawn out, signed and sealed, exactly in the same manner; and upon the faith of such exclusive privilege, he has embarked every shilling which he has in the world, they have little doubt that your Lordships will find them intitled to a possessory judgment; in consequence of which, they would be intitled to all the privileges of the patent, and among others, to restrain or stop all those who shall endeavour to disturb their right, by performing, or causing to be performed, stage representations in unlicensed theatres, or otherwise to subject them to the pains and penalties set forth in the various acts before recited. Besides, it would certainly be singular, if Mr. Kemble, after holding the theatre under the same right, and subjecting the amusement of the public to a much higher tax than Mrs. Esten consented to, and suffering no controul from the patentees, should be countenanced in fitting up a theatre in violation of that very

right, the validity of which he had so strongly recognized by his own acts and deeds. And it will be equally hard, if Mrs. Esten, relying on a declaration from Mr. Dundas, apparently unconditional, shall find herself ruined by that gentleman's interfering, to the effect of placing Mr. Kemble on an equal footing with her.

Before concluding, the memorialists must again repeat, that hard will be their case indeed, if, in consequence of any of the objections which has been reared up to the validity of this patent, they should be deprived of that exclusive privilege of acting, which, beyond the possibility of doubt, it was meant to bestow, and upon the faith of enjoying which for a term of years, Mr. Jackson has laid out every farthing which he was worth in the world, and even run himself into misfortunes; while Mrs. Esten, trusting to the enjoyment of the same privilege for a year, has expended very large sums, without any prospect of repayment. On the one hand, a great body of creditors will thereby be deprived of their only fund of payment, and Mr. Jackson's reversionary interest totally annihilated: on the other, an innocent person, who took a lease on the same terms that it had been enjoyed by Mr. Kemble, may be brought to ruin, without any fault im-

putable to her. They have both to regret, that such objections, if they shall now be of any weight, were not brought forward many years ago, that they might have acted accordingly.

Upon the whole, the memorialists humbly submit, that if they have been successful in showing that they have a good and effectual right to the patent of the Edinburgh theatre, and that they and their authors have possessed under it for a long term of years, that your lordships will find them intitled to put the laws against unlicensed theatres in execution; will suspend the letters *simpliciter*, and grant an interdict for prohibiting and discharging the said Stephen Kemble, or any other person acting under him, from opening any theatre for the performance of plays or interludes, or other entertainments of the stage, within the city of Edinburgh, or suburbs thereof, or within twenty miles of the said city, all in terms of the foresaid statutes.

In respect whereof, &c.

ARCH. CAMPBELL, Junior.

APPENDIX.

No. 1.

EDINBURGH THEATRICALS.

The contest for manager of this theatre is at last ended. On Wednesday the 18th instant, the Dean of Faculty settled it thus: That Mr. Kemble, who this year rents the theatre, of the creditors of Mr. Jackson, the late manager, at the enormous rent of 1360*l.* is to pay Mr. Jackson half the profits arising this season, and every other season after. Mr. Kemble is to be proprietor with Mr. Jackson, and sole manager; for which he is to be allowed a salary out of the profits, and that salary to be hereafter appointed by the Dean of Faculty.

At first sight it may appear not equitable, that Mr. Kemble should give Mr. Jackson half the profits of this year, after hazarding so large a sum for the rent. It is thus explained: Subsequent to Mr. Kemble's taking the theatre, he made Jackson a voluntary offer of half the concern, provided Jackson found security for his

part of the rent. This Jackson accepted; but did not produce that security which Kemble approved. This matter was left to the decision of the Dean of Faculty, which he determined as above.

The season has been so successful, as to yield considerable profits; so, *though Kemble gives up the half of these profits*, he has got in return *half of the property, while Jackson has any concern in it.* This speculation, therefore, has been *ultimately good.*

Jackson has too long suppressed the public entertainment: the whole of his conduct has appeared inexplicable, though he has held the theatres for eleven years.

Argus, 28th July, 1792.

No. 2.

TO THE PUBLIC.

Kemble writes that he is safe in Edinburgh theatre: that the Dean of Faculty assures him no other person shall have the house, and if any company should open another, he will commit them to prison for strict vagrants and vagabonds. They who, therefore, engage here, will do well to consider this threat.

Public Ledger, Aug. 28, 1792.

No. 3.

SIR, Edinburgh, 10th Aug. 1792.

On the part of Mr. Stephen Kemble, manager of the theatre-royal, Newcastle, I hereby make offer to you, as one of the trustees on the estate of Mr. John Jackson, of the sum of 500l. sterling, for a lease for one year from the 2d day of November next, of the theatres of Edinburgh and Glasgow. Mr. Kemble will, besides the above sum, pay the whole public burdens due from both theatres; or Mr. Kemble will pay such rent as shall be fixed by his grace the duke of Hamilton and the right honourable Henry Dundas, the patentees; he will find unexceptionable security for performance of his engagements; and if the trustees choose it, he will extend the lease to such longer period of time as they shall settle with him.

I am, Sir,

Your moſt obedient servant,

(Signed) JAMES GIBSON.

Mr. John King, accountant, in Edinburgh.

No. 4.

SIR,

Your letter addressed to Mr. King, dated the 10th of August, 1792, was sent by him to me this day, containing an offer of 500l.

The offer is altogether inadequate; and at whatever period it has been made, it would not have been accepted. It is now, however, too late, as I have agreed provisionally to let the theatre for 1000l. to Mrs. Esten, in consequence of the powers from the last meeting of creditors.

For your delay in not offering, you can only blame yourself, as I told you in Prince's-street, a day or two after the theatres were advertised, that I had offers, which would be accepted of, if Mr. Kemble did not come forward in time.

As to the offer being in any respect adequate, your knowledge in the business, when acting for the former trustee, must satisfy you to the contrary.

Last year you did not hesitate to declare, that you would shut up the theatre rather than take such a rent, or allow any persons whatever to controul the rent. What reason there is for altering

your opinion so completely this year you can best explain.

As to a reference of the rent to the duke of Hamilton and Mr. Dundas, had you made such a proposal at the meeting of creditors, you would have known their sentiments. Although I entertain a very great respect for the noble duke and Mr. Dundas, I should doubt how far a reference would be a proper mode for disposing of the property of creditors, and I am confident that neither of them would incline to enter into such a business.

I am, &c.

(Signed) ROBERT PLAYFAIR.

No. 5.

Royal Exchange Coffee-house, 28th Jan. 1793.

Adjourned Meeting of the Proprietors of the Theatre-Royal.

PRESENT,

Sir William Ramsay, bart. in the chair.

Mr. Thomas Smith, for himself and Mr. Sinclair, Sir John Whiteford, and Mr. Fullerton of Carstairs.

Mr. James Gibson, for himself, Mr. Fordyce, and Mr. Kemble.

Rev. Mr. Abercromby.
Mr. James Watson, writer to the Signet.
Mr. John Gray, Solicitor at Law.
Mr. John Moir, writer to the Signet.
Mr. Robert Brown, writer to the Signet.
Mr. Playfair, for Mr. Campbell's share, and as trustee for Mr. Jackson's estate.

Mr. Playfair laid before the meeting a memorial for the proprietors or sharers of the Edinburgh theatre-royal, which was read; and Mr. Gibson, as authorised by the Lord Advocate, Lord Provost, and Dean of Faculty, gave in to the meeting a note of the terms on which it was proposed the present proprietors should stand with regard to the right, in the event of a new patent being obtained; which note is of the following tenor, viz. "The gentlemen subscribers to the Edinburgh theatre, may be assured, that no intention whatever is entertained, by the gentlemen who are applying for a new patent, of trenching in any degree upon any of the rights which they at present enjoy; on the contrary, in the view of their obtaining the patent, they will secure to the subscribers the right of admission to every entertainment which may be exhibited in the building to be occupied as a theatre under the

patent: They will take the lessee under the patent bound to pay them the annual three per cent. to which they are at present entitled; and if a new theatre is built, the subscribers shall, if they desire it, have their security transferred from the present building to it. In that case, they will have to convey their shares to the proprietors of the theatre that may be built, and these shares will, in the mean time, remain secured upon the present building." Mr. Playfair stated, that in September last, some time after Mrs. Esten obtained the lease of the theatre, which contained a clause, that the lease should be void in the event of the consent of the patentees not being obtained, she applied to Mr. Dundas to know his intentions on the subject, and Mr. Dundas's letter to Mrs. Esten, of 25th of September, was produced, in which he agrees to the request made by Mrs. Esten, to postpone any consideration of the subject till he goes to Scotland, and should hear both sides of the question. Mr. Playfair farther stated, that some time after, Mrs. Esten having heard surmises that Mr. Dundas had taken a decided part for Mr. Kemble, while she received opposite information from those she employed in Scotland to state to him her case, she was resolved to know how that fact stood; and

with that view, Mrs. Bennet waited on Mr. Dundas when in Edinburgh; but not having obtained an interview with himself, she stated the matter to Mr. Hepburn his secretary, and among other things requested of him to mention to Mr. Dundas, that if there was any foundation for the abovementioned report, Mrs. Esten was resolved, although already considerably in advance on the faith of the lease, to give it up altogether rather than divide the patentees, as she had previously obtained the Duke of Hamilton's consent, or run the risk of injuring the amusement of the town; and soon after she received a letter from him (dated Melville-Castle, 22d November) a copy of which was produced: in this letter Mr. Hepburn, by Mr. Dundas's desire, acquaints her, in answer to the message delivered to Mr. Dundas from Mrs. Bennet, that it was not his intention at all to interfere in the dispute between Mrs. Esten and Mr. Kemble.

Mr. Playfair produced to the meeting a letter from the Duke of Hamilton, addressed to Mrs. Bennet, dated 21st instant, mentioning his having consented to Mrs. Esten's acting under the patent for the Edinburgh theatre, in consequence of

the lease she had obtained from Mr. Jackson's trustees.

Mr. Playfair produced a copy of a letter from Mr. Dundas to the Lord Advocate, dated the 22d instant, which was compared with the original in Mr. Gibson's possession, in which Mr. Dundas mentions, that he had resolved to take no part in the present disputes about the Edinburgh theatre, and that it was still his wish not to do it; but that if any advantage was taken of any supposed consent given by the Duke of Hamilton, he authorised the Lord Advocate, the Lord Provost, and the Dean of Faculty, to act in his name, as they think most expedient for the general satisfaction and amusement of the town of Edinburgh, and whatever they did he should approve of.

The meeting appointed these several letters and copies to be carefully kept along with this minute and abovementioned memorial.

Mr. Gibson stated that, in consequence of Mr. Dundas's letter of the 22d instant, the three gentlemen there mentioned had given authority to Mr. Kemble to act in the new theatre.

Mr. Gibson, at request of the meeting, stated, that the nature of the application which is now

made, was for a new patent, in the name of the Lord Advocate, Lord Provost, and Dean of Faculty, for the time being; and, in the event of the first and last of these offices being in the same person, that the deputy keeper of the signet for the time being should be third patentee: and this patent, if obtained, was meant to supersede the present, and as the sole patent for a theatre in Edinburgh, and that the application is made to the King.

The meeting having taken into consideration these several matters, are of opinion, that the application now made appears to them detrimental to the interest of the proprietors of the present theatre-royal, and to the large reversionary interest vesting in the person of the trustees for [illegible]'s creditors; but as the meeting are persuaded that the above gentlemen have made the application without being sufficiently acquainted with the facts and circumstances relating to the matter, and of the rights of parties, they think it very advisable, that an accurate state of these should be made up and laid before them; and, for this purpose, they appoint Mr. [illegible] to prepare such a case as may be proper [illegible] light of the present [illegible] Mr. Watson and Mr.

Moir, to be transmitted to each of these gentlemen. The meeting are in great hopes that, when matters are properly explained, the above application will not be persisted in; but in case it should, contrary to expectation, they think it expedient to declare, that having, about six years ago, when the former patent was near expiring, resisted an application something similar in its tendency, though by no means so strong in its effect, they will find it their duty to follow the same steps on this occasion, to support the property which they have in the theatre-royal, and prevent its being so much injured, if not entirely destroyed, as would probably ensue were the present application to be successful: for it never can be supposed, that gentlemen would have invested a considerable sum of money in a property of this nature, if it was liable in a manner to be annihilated at the expiry of every patent (which are always granted for a limited term), by a new party applying for and obtaining a second patent, totally unconnected with the property by which the former subsisted, which might be again rendered of little value by an application for a third, and so on. If there has been supposed any improper arrangement, either in regard to the letting of the theatre, or

to the internal management, it occurs to the meeting, that there were full powers either in the respectable persons in whose names the patent stands, or in that of the proprietors, to have corrected these, which it is not doubted they would have done had proper application been made for the purpose: and the meeting cannot avoid thinking, that the measure of such an application would have answered better than the confusion likely to arise for some time by the opening of a new theatre. The meeting empower Mr. Playfair to communicate with the above three gentlemen as a committee, when any thing occurs in which the interest of the proprietors is concerned; and to call another meeting, when any answer is obtained in the case to be laid before the gentlemen applying for the patent.

The meeting also concur in the steps which have been hitherto taken for supporting their rights, as mentioned in the memorial laid before the meeting by Mr. Playfair; and they authorise him to use their names as proprietors in any subsequent steps for that end which he shall be advised by counsel to follow; the expence attending which, it is understood, is to be defrayed by the trustees for Mr. Jackson's creditors, in right

of the reversionary property, the proprietors not being liable for any part of such expence, in regard their rights are considered to be preferable to all others.

If the only objection to the formality of the present patent arises from its having passed the great seal of Great Britain, in place of the seal appointed by the treaty of union for Scotland; although the meeting will not take upon them to give an opinion as to the validity of the objection, yet, as no patents were granted for licensing theatres in Scotland at the time this seal was instituted, nor for long after; and as the former patent was sealed with the same as the present, and subsisted for the whole time of its endurance; and as the present has been held for some years without challenge, and the theatre leased under it prior to the present opposition, they cannot allow themselves to think advantage will be taken of this circumstance, to prevent such error being corrected, if it is found to be one. If it should be thought the Lord Chamberlain has power to recal the present patent, and that application should be made for that purpose, on the footing of matters being rendered impossible to go on, by the patentees differing with regard to the lessees; the meeting think that they, the proprie-

tors, have the natural right to make such application, and to see that the patent and property are not to be disjoined, which they have reason to think has not hitherto taken place in any theatre, and behoved, in their opinion, to be extremely detrimental to the public interest.

Mr. Smith, on the part of Mr. Fullerton, gave his hearty and entire acquiescence to what is above resolved upon; but, for himself and Sir John Whiteford, observed, That upon the assurances now given by the gentlemen who are applying for a new patent to the proprietors of the present theatre-royal, he imagines, that the proprietors have not interest to interfere in the present disputes betwixt the gentlemen applying for the new patent and Mr. Jackson, or the trustees for his creditors, nor with any of the questions now instituted in the Court of Session betwixt Mr. Jackson, or the trustees for his creditors, and Mr. Kemble, or any of his performers; and therefore declares he will have no concern whatever with those disputes, but leave the parties to do therein as to themselves shall appear proper.

Mr. Gibson, for himself and Mr. Kemble, declared his acquiescence in what Mr. Smith had stated.

The meeting appointed copies of this minute to be laid before the gentlemen applying for the patent, along with the case above mentioned.

(Signed) WILLIAM RAMSAY.

January 29, 1793.

MEMORIAL.

S. KEMBLE AGAINST R. PLAYFAIR.

J. GIBSON, W. S. AGENT.

Memorial for STEPHEN KEMBLE, Manager of the New Theatre of Edinburgh, against ROBERT PLAYFAIR, Writer, in Edinburgh, designing himself acting Trustee on the sequestrated Estate of JOHN JACKSON, of the Theatre-Royal, Edinburgh, and Mrs. HARRIET PYE ESTEN, Lessee of the said Theatre-Royal.

BY the statute 10 Geo. II. c. 28. it is enacted, that, if any person shall, without authority of letters patent from his Majesty, or without licence of the lord chamberlain of his Majesty's

household, act, or represent for gain, any interlude, tragedy, comedy, &c. or other entertainment of the stage, or any part therein, such person shall forfeit 50l. See the 1st and 2d sections of the act.

It is further provided by the same statute, that "no person shall be authorised by any letters patent, or by the licence of the lord chamberlain, to act or represent for gain, any interlude, &c. in any part of Great Britain, except in the city of of Westminster, and in such places where his Majesty shall in person reside, during such residence only."

By another act, passed in 1767, cap. 27. sec. 19. so much of 10 Geo. II. cap. 28, as relates to common players of interludes, is repealed so far as the same respects the city of Edinburgh, and his Majesty is authorised to grant letters patent for establishing a theatre, or the suburbs thereof, which shall be intitled to all the privileges, and subjected to all the regulations to which any theatre in Great Britain is subjected.

In virtue of this last act, a patent was thereafter granted for twenty-one years from the date, and this patent expired in the year 1768.

A short time before its expiration, a new patent was granted to his grace the Duke of Hamilton,

and the right hon. Henry Dundas, for the term of twenty-one years, to commence from the 29th of September, 1788 : and by this patent the Duke of Hamilton and Mr. Dundas, and their assigns, are vested with all the usual powers, privileges, and immunities conferred upon the patentees of a theatre, absolutely and without any limitation as to the right of any other party whatever. The patent is conceived in the same terms as if it had been granted to them for their own private advantage and emolument as patentees or managers of a theatre, although it was well known that they had the most disinterested views, and only meant to use the patent for the benefit of the public.

The reason why the patent was granted to these two distinguished persons is probably known to your lordships. The right to the first patent had been acquired by Mr. Ross, a player, who who had fallen into difficulties, and had used the patent as he thought best, for procuring money to satisfy his own wants, or the demands of his creditors. Of consequence very little attention was paid to the amusement of the public, and it was evident that, as long as the patent remained in such hands, or if a new one was granted to Mr. Jackson, against whom the same

objections lay, the objects for which a theatre was licensed in Edinburgh would in a great measure be frustrated. It was therefore with much satisfaction the lovers of theatrical amusements beheld the patent vested in more liberal hands, and it was understood that the patentees, who could not be influenced by sordid views, would be attentive to prevent the right under it from being improperly applied, and from becoming a prey to creditors, as formerly.

Mr. Jackson, who had transacted with Mr. Ross, for the few years of the first patent that were then to run, and had thereby become the manager of the theatre-royal under the old patent, continued in that capacity under the new patentees. The same fate, however, which had attended former managers of the theatre befel Mr. Jackson. He became bankrupt, owing debts to a large amount.

In the course of a sequestration which followed, Mr. Jackson's creditors authorised the trustee to let, by public roup, for one year, the building occupied as a theatre, with the scenery, &c. which had become the property of Mr. Jackson. They were accordingly advertised, and the trustee made application to the Duke of Hamilton and Mr. Dundas, for the benefit of the

patent, to the person who should be the highest bidder. This application, however, was qualified with a condition, which to your lordships will appear extremely proper, considering the original purpose of the patent, viz. that the person so undertaking the management should be fit for the task; as a test of which, it was proposed, that he should be approved of by the Lord Provost of Edinburgh, his Majesty's Advocate, and the Dean of the Faculty of Advocates.

To this application no answer was returned by the Duke of Hamilton, but was agreed to by Mr. Dundas. The memorialist having been the highest offerer at the roup, was approved by the three gentlemen before named, and accordingly was lessee of the theatre, from the end of the year 1791 to the end of 1792, at the enormous rent of 1200l. sterling, which was paid to Mr. Jackson's creditors with the utmost punctuality, besides public burdens amounting to a considerable sum more; notwithstanding which, the memorialist having used his utmost exertions to please the public, was fortunate enough, as he flatters himself, to have been successful.

During the year in which the memorialist was lessee of the theatre, he had several differences with Mr. Jackson, and, in consequence of their

disputes, Mr. Jackson, it seems, adopted the resolution of using every means in his power to prevent the memorialist from again having the benefit of the patent, or at least from having a second lease of the building, then in the possession of his creditors.

With the assistance of Mr. Playfair, who had been his agent, he got a majority of the creditors to accept of a composition of 10s. in the pound upon their debts. Mr. Playfair and a Mr. Atkinson were securities for the composition, and it having been made a condition of the agreement, that Mr. Playfair and Mr. John King should be appointed trustees, another gentleman, who was then trustee, resigned his office, and they were chosen in his place.

Mr. Playfair now filled the threefold situation of agent for Mr. Jackson, trustee for his creditors, and security to a majority of these creditors for the composition. This put it in his power to forward the views of Mr. Jackson, in preventing the memorialist from being lessee of the theatre for a second year. Instead of advertising the theatre to be let by public roup, it was advertised for private bargain; and application was made to Mr. Playfair himself, taking no notice of Mr. King his joint trustee, who was never consulted

in the business; and has been as completely overlooked in every step taken since, as if he never had been elected, and Mr. Playfair were the sole trustee.

At this time it was uncertain what were the intentions of the patentees, as to the disposal of their right for the next season; but the memorialist humbly flattered himself, that his conduct during the last year would have some effect towards procuring their favour; and that the more especially, as he still was fortunate enough to possess the good opinion and approbation of the Lord Provost, the Lord Advocate, and the Dean of Faculty, who had considered the merits of his dispute with Mr. Jackson, and declared that the memorialist had throughout conducted himself in a liberal and honourable manner. He therefore resolved to apply for a renewal of the lease: and from the circumstance of his having been manager the year before, and being willing to pay as much rent as the patentee should think proper, which was certainly the highest rent that could be demanded, he had reason to think he would be intitled to a preference upon equal terms. But Mr. Playfair effectually prevented this, by setting out privately for London, attended by Mr. Jackson, where he entered into an agreement with

Mrs. Esten, for a lease of the theatre for one year, from the 2d of November 1792. And by the 4th article of this agreement, Mr. Playfair undertook to procure the consent of the patentees "to this agreement and proposed lease; and that unless the same can be obtained, or permission procured to the lessee to act under the patent during the term of the lease, in that case, neither party to remain bound by this agreement, otherwise the same to remain in full force."

As Mr. Playfair gave out, when he left Edinburgh with Mr. Jackson, that he was only going about some business to Fife, to return in a few days, the memorialist did not immediately hear of what had been done at London; but when he was informed of it, and saw that his plans were likely to be frustrated in this manner, he got the affair represented to Mr. Dundas. In consequence of this, when application was afterwards made to that right honourable gentleman for the benefit of the patent to Mrs. Esten, he declined to give his consent.

Notwithstanding this, however, the memorialist found that it was determined to persevere in the resolution of excluding him from any connection with the theatre. In this situation, he was induced to rely upon the countenance of

the patentees, and the support and protection of those gentlemen who had done him the honour to express their approbation of his conduct. The creditors of Mr. Jackson, or whoever had possession of the old theatre, were entitled to dispose of it as they pleased; but the memorialist knew, that an express right was granted to the patentees to build a theatre, and, of course, to enable him to give theatrical entertainments in any other building which might be fitted up for that purpose. He therefore fitted up, at an immense expence, the building commonly called the Circus, which is now a theatre in every respect more elegant and commodious than the old one.

While these preparations were making, the memorialist was given to understand, that the Duke of Hamilton did not favour his pretensions. But, on the other hand, he learned that Mr. Dundas, who had refused to give authority to Mrs. Esten, or indeed to interfere in the dispute betwixt her and the memorialist, was so far disposed to countenance the memorialist as to put him in all points upon an equal footing with his adversaries, if the Lord Provost, the Lord Advocate, and the Dean of Faculty still approved of his conduct. Secure of the approbation of these

gentlemen, the memorialist went on with confidence to finish the work which he had undertaken.

The new theatre was advertised to be opened on Monday the 21st of January, Mrs. Esten's company having been playing for some time before. In consequence of a protest taken by Mr. Playfair and Mrs. Esten, the memorialist knew that they pretended right to the exclusive use of the patent, and they had threatened him not only with actions for the penalties, but with a judicial opposition to what they affected to consider as an encroachment upon their right. In order, therefore, to prevent his being stopped by any summary law proceeding, which he had every reason to apprehend, the memorialist, on Saturday the 19th, applied to the Lord Swinton, Ordinary, by bill of suspension and interdict, stating the circumstances of the case, and praying that the chargers, or any persons on their account, should be prohibited from troubling or molesting him or his company until the merits of the question should be determined.

January 19, 1793.] Just as the memorialist had suspected, Mr. Playfair and Mrs. Esten at the same time presented a bill of suspension and interdict, founded upon their supposed exclusive right,

and praying that the memorialist, or any person acting under him, might be prohibited and discharged in the mean time from opening any theatre for the performance of plays, &c. The Lord Ordinary, after hearing counsel upon the two bills of suspension, made avisandum to your lordships, and appointed parties to lodge memorials.

In obedience to this order, the following is humbly submitted on the part of Mr. Kemble.

It must, in the first place, be observed, that though Mr. Playfair pretended at the hearing to have authority from both the patentees, he was unable to produce evidence of any such authority. Since that time there has been produced a letter from the Duke of Hamilton, of a date subsequent to the bill of suspension, in which his Grace consents that Mrs. Esten should act for this season under the patent. On the other hand, the memorialist produces a similar authority from Mr. Dundas, dated the 23d of January, and it was entirely owing to the hurry of public business that it was not granted a considerable time before.

So far, therefore, the parties are on an equal footing, a circumstance which was confidently denied, on the other side, before the Lord Ordi-

nary; and it was positively asserted, that Mr. Dundas had neither granted nor would grant, his consent in favour of the memorialist.

Your Lordships will evidently see, that this question has nothing to do with the penal clauses in the statute. If, indeed, the memorialist falls under these clauses, he is liable for the penalties, and that question is already before your lordships in another shape. Neither is it here to be determined, whether the memorialist, in consequence of Mr. Dundas's authority, is entitled to the full benefit of the patent. With submission, although your lordships did not adopt that opinion, still it would not follow that he is to be stopped by suspension and interdict at the instance of Mr. Playfair or Mrs. Esten. There is no popular action for shutting up a theatre. The penalties in the statute may operate as a prohibition against unlicensed theatrical entertainments; but there is no direct prohibition. Where, indeed, there is a patent, a title and interest is supposed to be created in the patentee, to prevent all encroachments upon his right. If Mr. Playfair and Mrs. Esten, therefore, have right to the patent, the memorialist shall not dispute their title; but on the other hand, if they

have not a complete right to the patent, or if the memorialist's right is as good as theirs, it does not appear what better title they have to interrupt him, than he has to interrupt them.

The question, therefore, to which the memorialist shall confine his attention is, whether Mr. Playfair and Mrs. Esten have acquired a right to the patent, sufficient to exclude him?

June 10, 1786.] It is pretended that when the old patent was about to expire, the Duke of Hamilton and Mr. Dundas could not have obtained the new patent unless by the consent of Mr. Jackson as proprietor of the building which had been erected for a theatre, and that he accordingly executed a deed of consent in the following terms: "I, as proprietor of the theatre-royal of the city of Edinburgh, and patentee thereof, hereby consent and agree, that a new patent for the said theatre may, if it please his majesty, be granted to his Grace the Duke of Hamilton and Brandon, and the Right Honourable Henry Dundas, treasurer of the navy, and to the survivor of them, for a term of twenty-one years, to commence from the 29th day of September, which shall be in the year one thousand seven hundred and eighty-eight, at which time the term of the subsisting patent expires to the said theatre,

the rights of the gentlemen subscribers to the said theatre being understood to subsist, and be continued under the new patent, in terms of the original deed, made in their favour at the erection of the said theatre."

1786.] It is also pretended that the Duke of Hamilton and Mr. Dundas wrote a letter addressed to the Lord Chamberlain, to the following effect: "In order to put an end to the disputes which have arisen relative to the renewal of the patent for the Edinburgh theatre, we have been requested to apply for the same in our joint names as trustees for the parties concerned, and therefore request your lordship humbly to move his Majesty, for a renewal of the said patent in our joint names, for twenty-one years from and after the expiration of the present term."

What might be the effect of such a deed, granted by M. Jackson, or such a letter by the patentees, it is unnecessary to enquire, as no evidence whatever is produced of their existence. There is strong negative evidence indeed to the contrary. As it was pretended that they are lodged in the Lord Chamberlain's office at London, the memorialist desired his solicitor in London to make particular enquiry into the fact, and he

was positively assured at the office, that no such writings ever had been there. The patent itself takes no notice of Mr. Jackson or his subscribers; neither is it granted to the patentees in trust, for any person whatever.

But your lordships will be pleased to attend to Mr. Jackson's own story. In the bill of suspension, page 5, he states what is indeed notorious, that a little time before the old patent expired, some gentlemen (not subscribers) applied for a patent in their own names: that he, Mr. Jackson, likewise applied for a renewal of it for his own benefit: That in order to end this dispute, he requested the Duke of Hamilton and Mr. Dundas to interfere: after this, their supposed letter bears that they were to hold the patent, as trustees for the parties concerned. But who were the parties concerned? not Mr. Jackson only, but likewise those gentlemen who had formerly applied for it merely for the public benefit, from the motives mentioned in the beginning of this paper.

Can it be supposed for a moment, that the Duke of Hamilton and Mr. Dundas would have applied for the patent, or condescended to hold it as trustees for Mr. John Jackson, on the footing that it was to be held as a part of his private

estate and at the disposal of his creditors in sequestration?

At the time when the patent was issued, Mr. Jackson was, from several circumstances, considered as the properest person to be employed as manager, and accordingly he acted in that capacity under the patentees, till his failure in 1790. Mr. Playfair maintains, that in consequence of the sequestration, his right in the patent devolved on his creditors. But so far is this statement from being just, that Mr. Jackson was always but a mere tenant at will, removeable at the pleasure of the patentees. This the creditors themselves were sensible of when the theatre was first let to the memorialist, for the patent did not follow the lease as a matter of course; on the contrary, the benefit for a year was humbly requested as a favour. The patentees themselves had precisely the same idea. Mr. Dundas, though he was disposed to indulge the creditors, who were to suffer by the bankruptcy, granted the favour under a condition, which precisely shows that he considered they had no right to demand it. The Duke of Hamilton, though unfavourable to the memorialist, has never acted as the trustee of Mr. Jackson or his creditors, but all along with

a view to the public purposes, for which he condescended to accept the patent.

Nevertheless, as a colour for the present application, Mr. Playfair executed a declarator of trust, narrating the acts of parliament, the several transactions with regard to the old patent, and with regard to the building of the theatre under it, Mr. Jackson's consent to the new patent, the Duke of Hamilton and Mr. Dundas's joint letter to the Lord Chamberlain, of which Mr. Playfair cannot even condescend to date, together with the terms of the new patent itself, and Mr. Jackson's being employed as manager under it, which is modestly termed his *possession*, and the transactions under the sequestrations; and concluding that the said letters patent, and licence, ought to be found and declared to be held by the Duke of Hamilton and Mr. Dundas in trust for the use and behoof of the pursuer and his successors, and his or their assigns; as in the right of the said John Jackson, and the sharers or subscribers to the said theatre, &c. &c.

The memorialist believes that there never was a more groundless action than this declarator of trust; but whatever be the issue of that process, it will be evident to your lordships, that Mr. Playfair, not having yet made good his point, or

produced the smallest evidence of the trust asserted, his averment in the question now before your lordships ought to go for nothing. Should the memorialist be absurd or impudent enough to say, that the patentees held the right in trust for him, his assertion would with great submission, be entitled to the same credit with that of Mr. Playfair.

But further to shew your lordships how far it is likely that Mr. Playfair will succeed in his process of declarator, the memorialist begs leave to inform you of some other circumstances in point of fact, which, if necessary, are humbly offered to be proved. Mr. Jackson himself, who certainly knew the whole transaction much better than Mr. Playfair can pretend to do, was so conscious that he had no right in the patent, that immediately upon his bankruptcy he went and delivered it up to the Duke of Hamilton. The creditors, upon hearing of this, were extremely dissatisfied; some of them imagining, either that Mr. Jackson had a right in the patent, or that he should have kept it, in hopes of obtaining the favour of the patentees in their behalf, rather than quit it entirely, to be disposed of without regard to their interest. Mr. Jackson was severely questioned about the busi-

ness, before a meeting of the creditors, and excused himself by pleading, that he had no right in the patent whatever, that he was a mere tenant at will of the patentees, and that it is impossible for any person in his situation to have detained it; and it would have been extremely improper to have attempted to do so, as it was the proper right of the Duke of Hamilton and Mr. Dundas. It was upon hearing this, the truth of which there was no reason to doubt, that the creditors solicited Mr. Dundas for the use of the patent as above mentioned; and it was not till very lately, and after Mr. Jackson had brought a number of the creditors to accept of the composition, that he ever pretended to have any right in the patent.

It is presumed, therefore, that your lordships will not lay great stress upon the pretended trust: but in aid of this argument, the chargers have recourse to another fancy. They state that they have been in possession of the exclusive privilege, under the present and former patents, for a term now upwards of twenty-five years, and consequently that they are entitled to a possessory judgment. It might be thought, from the terms in which this is stated, that, right or wrong, Mr. Jackson had held this exclusive privilege, upon

some title good or bad, *ex facie* belonging to himself, and not depending upon the will of another, or that he had at least held the patent in his own right, without ever accepting of any right from the patentees. But your lordships have already seen that this is far from being the case. As to the building, Mr. Jackson's possession is indisputable, but it has no connection with the question. As to the old patent, it is long ago expired, and is equally out of doors; but under the new patent Mr. Jackson has never possessed the exclusive privilege an hour, but at the will and pleasure of the patentees, which he humbly solicited, and with some difficulty obtained. He cannot therefore plead possession as a right, when it was only granted as a favour, *quia nemo debet mutare causam possessionis suæ.*

But in fact, if any one has the possession it is the memorialist; for at the solicitation of these very creditors, he obtained it as a favour from Mr. Dundas during the last year; and as no act has yet been done by the patentees, sufficient to deprive him of it (they being equally divided), it is submitted, that if any argument from possession will apply at all, it is entirely in his favour.

There is another conclusion in the declarator, which is something curious, and as it may be

used in this question, the memorialist shall shortly notice it. It proceeds upon an assumption in point of fact, that Mrs. Esten having obtained the Duke of Hamilton's consent, likewise received an intimation from Mr. Dundas, that he was not to interfere in the dispute, and hence it should be found and declared, &c. that there is no room for questioning the validity of the lease, &c. and that the same is effectual to convey the letters patent, &c. but it is easy to refute this very cunning and artificial plea.

Long before the Duke of Hamilton gave his consent, Mrs. Bennet, Mrs. Esten's mother, received a letter from Mr. Dundas's secretary, couched in the following terms: "Madam, Mr. Dundas desires me to acquaint you in answer to the message I delivered to him from you, that it is not his intention at all to interfere in the dispute between Mrs. Esten and Mr. Kemble.

I am, Madam, your most obedient servant,

(Signed) ROBERT HEPBURN."

Melville Castle, Nov. 22, 1792.

It is supposed that it was Mr. Dundas's intention then to let the parties stand or fall by their merit with the public, without shewing the least partiality to either of them; but whenever he

was informed that the Duke of Hamilton intended to declare for Mrs. Esten, Mr. Dundas, who thought that equity and justice demanded that the memorialist should be on equal terms with her, gave as full authority to him as Mrs. Esten had obtained from the Duke.

From all the circumstances of the case, therefore, it fully appears that Mr. Playfair and Mrs. Esten have no earthly title to interrupt the memorialist in his theatrical entertainments. His right is as firmly founded in the royal patent as theirs, and in all respects, it is submitted they are on equal terms. It is hoped, therefore, that your lordships will protect the memorialist from their attacks, that he may be allowed to pursue his honest endeavours to obtain a continuance of the public favour, and for that purpose, that you will pass the suspension and interdict at his instance, and refuse that presented by the other party.

In respect whereof, &c.

JOHN CLERK.

APPENDIX.

No. I.

Duke of HAMILTON, *and* HENRY DUNDAS, *Esq. Licence to establish a Theatre at Edinburgh.*

GEORGE the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, To all to whom these presents shall come, greeting. Whereas, by a clause in an act of parliament, in the seventh year of our reign, intituled, "An Act for extending the Royalty of the City of Edinburgh over certain adjoining Lands, and for Powers to the Magistrates of Edinburgh for the Benefit of said City, and to enable his Majesty to grant Letters Patent for establishing a Theatre in the City of Edinburgh, or Suburbs thereof," so much of an act of parliament which passed in the tenth year of our late royal grandfather King George the Second, of glorious and happy memory, intituled, "An Act to explain and amend so much of an act made in the twelfth year of Queen Anne, intituled, An act for reducing the Laws relating to rogues, vagabonds, sturdy beggars, and vagrants, into one act of parliament, and for

the more effectually punishing such rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent," as relates to common players of interludes, whereby all persons are discharged to represent any entertainment of the stage whatever, in virtue of letters patent from us, or by licence of the chamberlain of our household, for the time being, except within the liberties of Westminster, or where we shall in our royal person be resident, is thereby repealed, so far as the same respects the city of Edinburgh. And it is thereby enacted, that it shall and may be lawful for us, our heirs and successors, to grant letters patent for establishing a theatre or playhouse in the city of Edinburgh, or suburbs thereof, which shall be entitled to all the privileges, and subjected to all the regulations to which any theatre or playhouse in Great Britain is subjected. Know Ye therefore, that We, for divers good causes and considerations us thereunto moving, of our special grace, certain knowledge, and own motive, have Given and Granted, and by these presents, for us, our heirs and successors, Do Give and Grant unto our right trusty and entirely beloved cousin Douglas Duke of Hamilton and Brandon, and our right trusty and well-beloved Henry Dundas, of Melville Castle,

in the county of Edinburgh, treasurer of our navy, and their assigns, for and during the full end and term of twenty-one years, to commence from the 29th day of September in the year of our Lord one thousand seven hundred and eighty-eight, with full power, licence, and authority to erect, build, and establish a theatre or playhouse in the city of Edinburgh or suburbs thereof; and to gather together, form, entertain, govern, privilege, and keep, a company of comedians for our service, to exercise or act such tragedies, plays, operas, and other performances of the stage, only as have already been, or shall hereafter be, licensed by the Chamberlain of our Household, within the said theatre or playhouse, to be erected, built, and established, in the said city of Edinburgh or suburbs thereof, where they the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, from time to time think meet. And we do hereby for us, our heirs and successors, grant unto the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, full power, licence, and authority, to permit such persons at and during the pleasure of the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, from time to time to act plays and

entertainments of the stage of all sorts, peaceably and quietly, without any impeachment or impediment of any person or persons whatsoever, for the honest recreation of such as shall desire to see the same; nevertheless, under the regulations hereafter mentioned, and such other as the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, from time to time, in his or their discretion, shall find reasonable and necessary for our service. And we do hereby, for us and our heirs and successors, further grant to them, the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns aforesaid, that it shall and may be lawful, to and for the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, to take and receive such of our subjects as shall resort to the said theatre, to see or hear such tragedies, plays, operas, or other such entertainments of the stage whatsoever, such sum or sums of money as either have been customarily given and taken in the like kind, or as shall be thought reasonable by the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, in regard of the great expence of building the said theatre, and of scenes, music,

and such other decorations as are usual and necessary. And further, for us and our heirs and successors, we do hereby give and grant unto the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns, full power to make such allowances out of the money which shall be received by the acting such tragedies, plays, operas, or other such performances of the stage as aforesaid, to the actors and other persons employed in acting, representing, or in any quality whatsoever about the said theatre or playhouse, as the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns shall think fit; and that the said company shall be under the sole government and authority of the said Douglas Duke of Hamilton and Brandon, and Henry Dundas, and their assigns; and all scandalous and ——— persons shall, from time to time, by him or them, be ejected and disabled from playing in the said theatre: and for the better attaining our royal purposes in this behalf, we have thought fit hereby to declare, that henceforth no representations be admitted on the stage, by virtue or under colour of those our letters patent, whereby the Christian religion in general, or the church of England, may in any manner suffer reproach, strictly inhibiting every

degree of abuse, or misrepresentation of sacred characters, tending to expose religion itself, and to bring it to contempt; and that no such character be introduced or placed in any other light than such as may enhance the just esteem of those who truly answer the end of their sacred function. We further enjoin the strictest regard to such representations as any way concern civil polity or the constitution of our government, that these may contribute to the support of our sacred authority and the preservation of order and good government. And it being our royal will and pleasure that, for the future, our theatre may be instrumental to the promotion of virtue, and instructive to common life, we do hereby command and enjoin, that no new play, or old or received play, be acted under the authority hereby granted, containing any passages or expressions offensive to piety and good manners, until the same be corrected and purged by the said governors from all such offensive and scandalous passages and expressions. And these our letters patent, or the inrolment or exemplification thereof, shall be in, and by all things good, firm, valid, sufficient and effectual in law, according to the true intention and meaning thereof, any thing in these pre-

sents contained to the contrary thereof in any wise notwithstanding. In witness whereof we have caused these our letters to be made patent. Witness ourself, at Westminster, the nineteenth day of August, in the twenty-eighth year of our reign.

By writ of Privy Seal,

WILMOT.

Entered in the Lord Chamberlain's office, the 10th day of October, 1788.

(Signed) JAMES ELY.

No. 2.

COPY—Letter by the Right Honourable HENRY DUNDAS to the LORD ADVOCATE.

Wimbledon, January 22, 1793.

MY LORD,

I had determined to take no part in the present disputes about the Edinburgh Theatre, and it is still my wish not to do it; but if any advantage is taken of any supposed consent given by the Duke of Hamilton, I authorise your lordship, the Lord Provost, and the Dean of Faculty, to act in my name, as you think most expedient for the general satisfaction and amusement of the

town of Edinburgh; and whatever you do I shall approve of; and I am, my dear Lord, your's sincerely,

HENRY DUNDAS.

No. 3.

Edinburgh, January 23, 1793.

As authorised by the right honourable Henry Dundas, we hereby consent to Mr. Kemble acting under the patent for the Edinburgh Theatre.

RO. DUNDAS.
HENRY ERSKINE.
THOMAS ELDER.

February 4, 1793.

MIN.—MR. KEMBLE.

JAMES GIBSON, W. S. AGENT.

CLERK.

MINUTE for Mr. KEMBLE, in the question between Mr. PLAYFAIR and Mrs. ESTEN.

BILLS.—Mr. John Clerk represented, that in the Memorial given in to their lordships, in name of Mr. Playfair and Mrs. Esten, a great

many assertions were made, of which no evidence was produced, as well as many that had not been insisted on before the Lord Ordinary. On this account, and to vindicate the conduct of a right honourable gentleman, one of the patentees, which had been a good deal mis-stated, it was necessary to trouble their lordships with a few remarks.

Though it cannot be supposed that the personal character of Mr. Dundas could in any degree suffer, or even at all be brought into question by any thing asserted in a controversy of this kind, maintained by the litigants now engaged in it, yet, as the court must determine from the facts, the circumstances and the evidence before it, Mr. Kemble finds it necessary, for his own sake, to put the subject in its proper light; and it is becoming the dignity of the right honourable gentleman, that no misrepresentation tending to impeach the propriety of his conduct, should appear unrefuted before this supreme court.

Much necessary matter is contained in Mr. Playfair's memorial and appendix; the whole of the latter, indeed, appearing to be totally superfluous, afterwards, however, it should be more particularly noticed. The memorial sets out with a narrative of the proceedings which took place from the time the first patent was granted, till it was

renewed in 1788. It was not easy to see the connection of this tale with the present dispute; and to show that Mr. Playfair himself is of this opinion, it may be observed, that he has not thought it worth while to produce evidence of any one circumstance in statement. The main fact, however, deduced from the history, need not be disputed, viz. that Mr. Jackson became proprietor some years before its termination, and had likewise acquired right to the building of the theatre itself, subject to the rights of the subscribers, who are called proprietors, with whose money it had been built. Upon the strength of these acquisitions it seems, Mr. Jackson, who had taken an extensive survey of the antiquities of Greece and Rome, relative to this subject, and had explored the theatrical history of England and France, made the discovery that he was entitled to a renewal of the patent in his own name. The conclusion which he drew, was wonderfully adapted to the premises. It must have been a very well understood point, that the patents would of course be renewed to the holders of the property, and hence the patent was to be given to Mr. Jackson alone, without regard to the other proprietors.

But it is impossible that the court could pay the smallest attention to these pretences, or suppose for a moment that Mr. Jackson had a claim of any kind to the patent. As to the legal right, it was in the crown, who, it is admitted, could have bestowed it upon any person whatever; for nothing farther can even be pretended than an equitable claim to the royal indulgence and favour. But whatever might be the case with other patentees, and in other circumstances, it may be safely asserted, that no person in the city of Edinburgh, nor of any one who had ever been within the walls of the theatre, or attended to its progress during Mr. Jackson's management, ever imagined that he had such a claim. It is unnecessary, and it would be painful to recapitulate the different circumstances of his conduct, which continually fretted and disgusted the public. In short, had the patent been renewed in his name, it would have been considered almost as an insult to this metropolis; and many of those who are most attached to theatrical amusements, would have altogether renounced them.

But it is far from being admitted, that had Mr. Jackson's conduct been otherwise, he had the smallest reason to suppose that the patent would be renewed in his name. He pretends to

have laid out money upon the faith of the renewal, but he had no title to do so; and the assertion is believed to be directly contrary to the fact. Whatever advances he made, either were or should have been reimbursed with proper management, during the subsistence of the old patent, at the expiry whereof the theatre, with its pertinents, still remained a subject of considerable value, whoever should get the new patent. But why were the public of Edinburgh to be thus put into Mr. Jackson's power, or to be told, that because he had at his own discretion laid out money on the theatre, he, therefore, was to get the royal patent, giving him a right of controul over their favourite amusement? The theatre had been too long in the hands of such adventurers; and the audience, universally wearied and disgusted, longed for nothing more than the issue of the patent, that a new one might be vested in more respectable hands. These facts do not depend upon letters, oaths of witnesses, or any species of private evidence. They are notorious, and every person almost who recollects what passed at that time must be sensible that they are justly stated.

The facts, with regard to the granting the new patent, are stated, it is supposed, upon the authority of Mr. Jackson himself, and indeed they

could have come from no other quarter. The first question, therefore, to be asked is, if all this be true, why did Mr. Jackson attempt to defraud his creditors by delivering up the patent to the Duke of Hamilton, as mentioned in Mr. Kemble's memorial? Why did he make a composition with his creditors, on the supposition that he had no right to the patent? Had the creditors known as much as he did, they would not have quitted him for a much larger composition.

If it be said that is *jus tertii* to Mr. Kemble, and that he has no business with the transaction thus made by Mr. Jackson with his creditors, it may be observed, that Mr. Jackson having held this conduct with regard to his creditors, has no title to credit with their lordships, unless where every particular of his story is confirmed by evidence. For this reason it would have become Mr. Playfair to have produced some proof of the particulars asserted, with regard to the trust undertaken by the Duke of Hamilton and Mr. Dundas. Their lordships surely will not rashly believe, that these honourable persons would willingly and wittingly have become co-trustees with Mr. Playfair upon the bankrupt estate of Mr. Jackson. Or can it be supposed that they would undertake this humiliating office, just, as it were,

to shew their absolute disregard of a most respectable application in behalf of the public of Edinburgh? In short, the story told by Mr. Jackson with regard to this matter, must either be an absolute fiction, or the truth must be so disguised and distorted, as to make it impossible to discover the smallest traces of it; and as not one of the circumstances are proved, and not one of the writings are produced, Mr. Jackson's single assertion, which is contrary to the express terms of the patent, as well as the declared views of the patentees, cannot have the smallest weight in their lordships minds.

It may therefore be concluded, that Mr. Dundas allowed his name to be inserted in the patent, for the reasons, and on the terms expressed in his letter to Mrs. Esten, dated 25th of September, 1792, quoted in the 14th page of her memorial. He there says, "When I agreed to allow my name to be put in the patent, it was to prevent a great deal of heat on the subject of the Edinburgh theatre, which was then a matter of much agitation. I have never considered myself in any other light but as a trustee for the public, and my conduct must of course be entirely regulated by what I shall conceive to be most likely to contribute to

the amusement of the public in one of its most rational amusements."

A great deal is said in Mr. Playfair's memorial, upon the submission entered into betwixt Mr. Jackson and Mr. Kemble to the Dean of Faculty; and it seems to be taken for granted, that the decreet-arbitral pronounced was *ultra vires*. That matter is not now before their lordships, otherwise it would be easy to show how ill used Mr. Kemble had been by Mr. Jackson, as well as how properly the award had been given by the Dean of Faculty. But such a discussion does not belong to the question before the court, which, after what has been stated, comes shortly to this, whether Mrs. Esten has acquired a right to the patent for this season from the patentees?

Soon after the composition was agreed to by the greatest part of his creditors, Mr. Jackson began to throw out hints that the patent was actually his property, and that the Duke of Hamilton and Mr. Dundas held it only for his behoof. This, it is supposed, was to deter Mr. Kemble or others from any design of interfering with him in the management of the Edinburgh theatre. But Mr. Kemble, who knew that another language had been held, and who conceived that his exer-

tions in the service of the public, with which he had reason to believe they were satisfied, as well as the private transactions he had had with Mr. Jackson, entitled him to a competition, laid a state of the case before the Lord Provost, (sir James Sterling) the Advocate, and the Dean of Faculty, who had personal knowledge of every circumstance as arbiter. To these gentlemen Mr. Kemble applied, as having formerly been named by Mr. Dundas himself to dispose of the patent in so far as he was concerned. They approved of his conduct, and declared their opinion, that in the circumstances of the case he was entitled to the benefit of the patent; and at their desire a copy of the state of facts laid before them was sent to each of the patentees.

Mr. Kemble was given to understand, that Mr. Dundas would determine with regard to the matters contained in the case, whenever he came to Scotland; and accordingly, soon after his arrival, that right honourable gentleman had a conversation upon it with the Lord Advocate, and the present Lord Provost, Mr. Elder. Mr. Dundas was clearly of opinion, that the terms of the patent granted to the noble duke and himself, made it an indivisible right, which, without the concurrence of both patentees to the same measure,

must be ineffectual. At the same time, however, he entirely agreed with the Lord Provost, the Lord Advocate, and the Dean of Faculty, that Mr. Kemble was entitled to the benefit of the patent, and he would have had no difficulty to give his consent in Mr. Kemble's favour accordingly, if it had then been understood that the noble duke would refuse his concurrence. In these circumstances Mr. Dundas thought that neither party could have a better right than the other, and that a new patent ought to be applied for, to be vested in the Lord Provost, the Lord Advocate, and the Dean of Faculty for the time being, as the most proper persons to hold it from their official situations. For these reasons Mr. Dundas did not think proper to give authority to Mr. Kemble at the time; as such authority, in his opinion, would be entirely nugatory, and he was more confirmed in this resolution from being informed afterwards, that the patent had not passed the great Seal of Scotland, as appointed by the treaty of Union (Art. 24), an objection to it which Mr. Playfair in vain endeavours to answer in his memorial.

About the same time it would appear, that Mrs. Bennet, Mrs. Esten's mother, had applied to Mr. Dundas in her daughter's behalf. The an-

swer returned (Nov. 22, 1792) was not from Mr. Dundas himself, but from his secretary. This certainly is not legal evidence; but, in any point of view, it cannot be held as so accurate an expression of his sentiments, as if it had come from the right honourable gentleman himself. The critical interpretation, therefore, which Mr. Playfair is willing to give to this letter, cannot be given to it by their lordships. Mr. Playfair would insinuate, that Mr. Dundas, by declining to interfere, meant and intended to leave Mrs. Esten the full benefit of whatever authority might be communicated by the Duke of Hamilton. But it appears, that the very opposite was his intention, and that he was disposed to agree to any practicable measure by which the benefit of the patent could be disposed of by the three gentlemen so often mentioned; that is, as matters stood at the time, in favour of Mr. Kemble. By not interfering, therefore, Mr. Hepburn must have meant declining to give his authority to Mrs. Esten to the prejudice of Mr. Kemble; whereas if Mr. Dundas had allowed the Duke of Hamilton to dispose of the patent, this, so far from not interfering in the dispute, would have been a most effectual interference in favour of Mrs. Esten, and against Mr. Kemble. It is not possible to argue,

that Mr. Hepburn's letter was a favourable answer to Mrs. Bennet's request; for, if it had been so, it would have been otherwise expressed, and Mr. Hepburn would have said, either that Mr. Dundas was willing to give authority to Mrs. Esten, or that he would not oppose any such authority if granted by the Duke of Hamilton. But if Mr. Hepburn's letter was unfavourable, and was to be interpreted as a refusal, what could Mrs. Esten understand by it, but that Mr. Dundas would not give his sanction either positively or negatively, so as to enable her to obtain an advantage over Mr. Kemble in the dispute she had with him?

That this was Mr. Dundas's own view, will more fully appear from a letter written with his own hand to Mr. Kemble's agent, upon being informed that the patent had not passed the proper seal, and which is dated the very next day after that of his secretary's to Mrs. Bennet.

"Sir, *Nov.* 23, 1792.

"I am very glad you have discovered the error in the patent, for in its present state it does not occur to me that it could be made use of for any beneficial purpose to the public amusement."

Mr. Dundas continued in the resolution of giving no authority to Mr. Kemble, and that for the reasons formerly stated, until he was informed that Mr. Kemble was likely to be oppressed in virtue of a supposed authority communicated by the Duke of Hamilton; that Mrs. Esten had given it out that she had Mr. Dundas's own authority, or at least a promise from him, which was to be considered as equally effectual; and above all, that he was to be forced in a court of law to give up the patent altogether as a trust, not for the public, but for the benefit of Mr. Jackson and his creditors. Mr. Kemble may be allowed to say, that the justice and equity, as well as the dignity of the right honourable gentleman, were revolted at these propositions. He had formerly refused to authorise Mr. Kemble, because he considered that his consent would be without effect; but as he could not answer for the decision of a court of law upon that subject, especially when a false colour was given to his own conduct and sentiments, his former reasons could evidently no longer have any operation in his mind, and to act consistently, it was proper not only to contradict Mrs. Esten, but to put Mr. Kemble upon an equal footing with her. The assertions upon

which she endeavoured to establish herself in the patent, were highly unwarranted and injurious to him as well as to the public at large. To him, because his conduct was represented as directly contrary to the professions which he made to the honourable gentlemen who had conversed with him on the subject, to his duty to the public, and to the justice which he considered in some measure due to Mr. Kemble; because he was represented as unfaithful to his promises to Mrs. Esten herself, and, finally, unfaithful to Mr. Jackson as one of the private trustees of that gentleman. To the public, because it was asserted, that the patent was not vested in trustees for the purpose of directing a public amusement of so much importance to the metropolis, but for the purpose of appropriating to creditors the absolute controul of that amusement by which the liberal system of management formerly complained of could not have been avoided.

Mr. Dundas, upon being informed of these circumstances, and that the decision of the court was uncertain as matters then stood, was prevailed upon to communicate his authority to Mr. Kemble, as mentioned in his memorial. This, however, was accompanied with a letter to the

Lord Advocate, which shows in another instance what Mr. Dundas's opinion was concerning the whole affair. "Unless necessary," he says, "to prevent inequality in the litigation, I do not wish any use to be made of it." No wonder Mr. Dundas reluctantly gave his name to an authority which for so many reasons he considered to be totally ineffectual; but this very reluctance may show their lordships in a still stronger point of view, how much he had always been disposed to attend to the recommendation of the Lord Provost, the Lord Advocate, and the Dean of Faculty, that is to befriend Mr. Kemble.

It may be safely asserted, that Mrs. Esten understood what Mr. Dundas's intentions were from the first: and that the construction which she affects to put upon Mr. Hepburn's letter, is entirely an *ex post facto* exertion of ingenuity. But though she had been mistaken with regard to Mr. Dundas's meaning, she has not told their lordships that she took effectual care to provide against the consequences of any such mistake. There is much parade about the execution of the contract being deferred, and afterwards finished upon receiving Mr. Hepburn's letter. A great deal is said about Mrs. Esten's dependance upon

the assurances it contained, and the great expence which was thereby incurred. But in the first place, their lordships are not told what is the fact, that she had engaged all her performers, and entered into all her engagements relative to the theatre long before the time; and in the second place, is not a word of a bond of indemnity, which, Mr. Kemble has been informed, was given to her in case the benefit of the patent should not finally be obtained; she is called upon to say, whether such a bond was not given, and if so, she at least has no hardship to plead: as to Mr. Playfair and Mr. Jackson, they certainly could not expect much favour at the very time when they were virtually accusing Mr. Dundas of breach of trust. Mr. Playfair and Mrs. Esten are called upon to produce the bond of indemnity, the tack entered into, and the engagements made with the performers, from which the assertions now made will be proved.

It was formerly noticed, that the whole of Mr. Playfair's appendix seemed to be totally superfluous; but may farther be mentioned with regard to it, that the two first numbers, consisting of anonymous paragraphs in the London newspapers, which ascribed to Mr. Kemble, in the

memorial, did not originate with him, and he solemnly assures their lordships, that he had no concern whatever, either directly or indirectly, in these paragraphs. It occurs to him, that they may have been inserted by some friendly hand possessed of more zeal than prudence, but who it was he never discovered. Farther, as to No. 5. being minutes of the proprietors of the theatre-royal, it was as counsel for Mr. Sinclair, one of the clerks of session, Mr. Muirhead of Herbertshire, the trustees of sir John Lockhart Ross, the heirs of Doctor Young, and for Mr. Fordyce, all proprietors of the theatre-royal; that whereas it might be supposed, if the fact were not contradicted, that they approved of the resolutions of the majority in the measures proposed in regard to the patent, the fact was, that they had given no authority whatever for that purpose, that they disapproved of the proceedings of the majority, and insisted that their names should not be used in the business.

The lords, on this, granted an interdict; and Kemble's theatre was immediately shut, to the great joy of Mrs. Bennet and her company. Indeed they had reason to rejoice, for Kemble had

full houses, while they were playing to empty benches. Mrs. Bennet was thoroughly convinced that the taste of the public was not to be tied up with the slender binding of a patent; they made their choice of Kemble's company in preference to her's; and for reasons too obvious for me to point out. This lady, indeed, was ill calculated to conduct a theatre. When we contemplate her literary celebrity for animation and pathos; when we find her pen has drawn characters, laudable in action, passion, and sentiment, we lament, and are disappointed, when, in private life, we see the authoress in the common practice of vulgar vehemence! She had appointed Mr. Williamson deputy-manager, who was merely a cypher, but consented to echo her imperious, irrational, and absurd commands: so in effect, he sat down like Sardanapalus to the distaff. In this instance that old prophetical Scotch adage was verified:

"Waters shall waxe, and woods shall waine,
"And unman shall be man, and man shall be naine."

It is unaccountable to me, how a gentleman of Mr. Williamson's sense could submit to such a situation, where every thing that could gratify the pride of management was enjoyed by Mrs.

Bennet, and the disagreeables fell to his lot. In this Mrs. Bennet aped the monkey pulling the chesnut out of the fire with the cat's paw. It is a maxim among the best of kings, if they be wise, to dispatch ungrateful actions by deputy, and those that are popular by their own hands: but in the mock monarchy of the stage, where such aphorisms are adopted, I do not see any thing enviable in the post of prime minister. In short, I have seen such cankered conceit, such serpentine conduct in deputy-managers, d such hypocritical subjection in actors, I hesit t not to pronounce, that the bare and empty title of deputy-manager, without the full quality of power, will never procure other respect and awe than the ass in the fable, which was adored for the sake of the image it carried.

END OF VOL. III.

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